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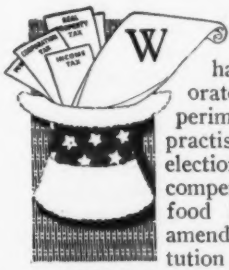
The Wisconsin Income Tax Law

An Interesting Fiscal Experiment

BY KOSSUTH KENT KENNAN

[Ed. Note.—Mr. Kennan is a well known lawyer and writer upon taxation, who has recently published an exhaustive work upon the Income Taxation and has had charge of the administration of the Wisconsin Income Tax Law which he describes.]



WISCONSIN is a progressive state. It has been called a laboratory of political experiment. The corrupt practises act, the primary election law, the workmen's compensation act, the pure food laws, and proposed amendments of the Constitution to clear the way for the initiative, referendum, and recall are only a few of the many radical measures which seem to have found favor with the people of the state.

But it is in the domain of taxation that the greatest and most startling advances have been made. When the writer of this article organized a tax commission fifteen years ago, without any appropriation from the state, and endeavored to call public attention to the evils of the ordinary property tax, his utterances might have been likened to "the voice of one crying in the wilderness," for he met with but little sympathy or encouragement. But when the report of the commission was published in 1899, the first 5,000 copies were seized and read with such avidity that a second edition of an equal number was ordered, and even this number proved insufficient.

The legislature seemed to awaken to the importance of the subject, and provided for a permanent tax commission with ample facilities and extraordinary powers. The three members of the commission were appointed for ten years at liberal salaries, and no limit was placed upon the amount of money which the commission might expend. The results of twelve years' work by this commission have been remarkable. The assessment of the property of the state has been increased from $600,000,000 to nearly $3,000,000,000, and the assessment of railroads and public service corporations have been put upon a scientific basis which nets the state millions of dollars more than was previously received from these sources. It was probably largely through the efforts of the tax commission that the public came to understand the defects of the personal property tax and the necessity for adopting some plan which would adjust the tax burden to the shoulders of the taxpayer more equitably.

History of the Income Tax.

It is a curious fact that the sentiment in favor of the income tax seems to have developed spontaneously and naturally among the people of the state. There was no beating of drums to herald the coming of the new tax; no propaganda in its favor was made in the newspapers, nor was it even so much as alluded to by public speakers until quite recently. April 28, 1903, a joint resolution was introduced in the assembly, providing for an amendment to the state constitution, authorizing a graduated income tax. This resolution was passed with but one dissenting vote in each house. In 1904 the platforms of all the political parties —Republicans, Democrats, Social Democrats, and People's Party—came out strongly in favor of the income tax amendment. Indeed the Democratic platform went so far as to say, "We pledge each and all of the Democrats elected to the next legislature to support such amendment;" and from this time forward platforms and governor's messages vied with each other in urging the adoption of the tax.

As the proposed amendment was not properly advertised in 1905, a substitute amendment, somewhat more carefully worded, was again passed by the legislature, with overwhelming majorities. It was ratified in 1907, by the unanimous vote of the senate and with but one dissenting vote in the assembly. In November, 1908, the amendment was voted upon by the people, 85,696 voting for it and 37,729 against it. In 1909 a bill was introduced and a recess committee of seven, four from the assembly and three from the senate, was appointed to investigate the subject and report to the next legislature. At the legislative session of 1911 a great amount of opposition to the bill developed, and innumerable amendments were proposed. It was finally passed in the assembly by a vote of 54 to 25, and in the senate by the narrow margin of 15 to 14. By the terms of the law the assessment was to begin January 1, 1912, and to cover the whole amount of income received during the year 1911.

Summary of the Law.

There are four important features of the Wisconsin income tax law which should be clearly understood. They are:—

First. The law practically abolishes the general property tax upon intangible personal property, and adopts the income tax as a substitute.

Second. The administration of the law is centralized in the state tax commission.

Third. The tax is levied upon the basis of the income of the preceding year. For example, the amount of taxable income for 1912 is obtained by deducting from the gross income received during the year 1911 the expenses of producing such income, together with such exemptions as are allowed by the law.

Fourth. The table of rates for individuals differs widely from that provided for corporations, and the latter table embodies a principle not heretofore recognized in income taxation.

The law begins with certain definitions. The word "person," is held to include corporations. The term "income" is made to include, among other things:—

(a) "All rent of real estate, including the estimated rental of residence property occupied by the owner thereof."

(b) "All dividends or profits derived from stock, or from the purchase and sale of any property or other valuables acquired within three years previous, or from any business whatever."

The inclusion of the rental value of one's own house has given rise to much complaint, although it is necessary, in order to preserve equality of treatment between the man owning his house and the man who has to pay rent. Such a provision is found in the income tax laws of nearly all European countries.

Paragraph (b) might be construed as the entering wedge for an unearned increment tax; and it is often suggested that there ought to be a corresponding provision that losses suffered on property purchased within three years should be deducted. The only losses which are permitted to be deducted by the Wisconsin law are those "actually sustained

within the year, and not compensated by insurance or otherwise."

The deductions allowed to individuals may be outlined briefly as follows:—

(a) Business expenses (but names and addresses of employees receiving salaries of more than $700 must be reported);

(b) Losses not compensated by insurance;

(c) Dividends from firms and corporations which pay income tax, providing the corporation has reported the amount thus paid and name and address of person to whom paid;

(d) Interest on indebtedness (names and address of creditor to be given);

(e) Interest from exempt bonds;

(f) Salaries of United States officials;

(g) Pensions (United States);

(h) Taxes on the property from which income is derived;

(i) Inheritances which are subject to the state inheritance tax, and

(j) Life insurance to amount of $10,000. Deductions corresponding to a, b, c, e, and h above are also allowed to corporations.

No exemptions are allowed to firms or corporations, but there are exemptions to individuals of:—

$800 for a single person;

$1,200 for husband and wife;

$200 for each child under eighteen years;

$200 for each additional dependent.

As originally drawn, the bill provided for exemptions of $600 for a single person and $800 for husband and wife; but the socialistic element in the legislature demanded much higher exemptions, and as its vote was needed in order to pass the bill, the sums of $800 and $1,200 were finally agreed upon as a compromise. The amount of income tax lost by this comparatively slight increase in the amount of exemption has been estimated at $500,000. That the exemptions in Wisconsin are relatively high may be seen by comparison with European income tax laws. In forty continental states and countries which levy income taxes, the average exemption at the foot of the scale approximates $150. It is true that in England and her colonies the exemptions average as high as in Wisconsin, but the rates are largely "proportional" (that is, a flat rate) and much lower upon the average.

The rates prescribed by the Wisconsin law for individuals are as follows:—

For the first $1,000 of taxable income (or part thereof) 1 per cent.

Second $1,000 of taxable income (or part thereof) 1¼ per cent.

Third $1,000 of taxable income (or part thereof) 1½ per cent.

Fourth $1,000 of taxable income (or part thereof) 1¾ per cent.

Fifth $1,000 of taxable income (or part thereof) 2 per cent.

Sixth $1,000 of taxable income (or part thereof) 2½ per cent.

Seventh $1,000 of taxable income (or part thereof) 3 per cent.

Eighth $1,000 of taxable income (or part thereof) 3½ per cent.

Ninth $1,000 of taxable income (or part thereof) 4 per cent.

Tenth $1,000 of taxable income (or part thereof) 4½ per cent.

Eleventh $1,000 of taxable income (or part thereof) 5 per cent.

Twelfth $1,000 of taxable income (or part thereof) 5½ per cent.

All over $12,000 of taxable income (or part thereof) 6 per cent.

It will be seen that this table has the merit of advancing by easy steps up to 6 per cent. The $1,000 classes or grades of income, however, are large as compared with European countries. For example, Prussia has 17 grades before $1,000 of taxable income is reached, Austria 23, Sweden 29, and Saxe-Coburg-Gotha 31. The table may prove misleading at first glance. Each of the first $12,000 is considered separately. While the rate prescribed for the fifth thousand is 2 per cent, the tax on $5,000 would be only $75, or 1½ per cent. In like manner the tax on $12,000 would be, not 5½ per cent of $12,000, but the mean of 5½ per cent and the preceding percentages, or about 2.95 per cent. The effect of this plan is to give a sort of "diffused progression" to the rates. Compared with the average rates in forty foreign countries, the Wisconsin rates are lower up to about $12,000 of income, and higher from that point forward.

The table of rates for corporations

differs materially from that for individuals, and, as has been intimated, embodies a somewhat novel principle. The rate increases up to 6 per cent by steps of ½ of 1 per cent for every 1 per cent of increase in the percentage which the taxable income bears to the assessed valuation of the plant or property from which the income is derived. Thus if the taxable income equals 1 per cent or less of the assessed value of the property used and employed in the acquisition of such income, the rate of tax is ½ of 1 per cent of such income. If the taxable income equals more than 1, but does not exceed 2 per cent, of the assessed value. of the property, etc., the rate is 1 per cent. If more than 2 but not exceeding 3 per cent, the rate is 1½ per cent. In this manner the rate progresses "until the rate of profits equals 12 per cent of such assessed value of the property used and employed in the acquisition of such income, when such rate shall continue as a proportional rate of 6 per cent of such taxable income."

The theory of this rather complicated method is that a corporation which requires a large plant in order to make a certain amount of net profit ought to be taxed at a lower rate than a corporation which can make an equal amount with a smaller investment. The idea may have been borrowed from a law passed in Georgia in 1863, which levied a graduated tax on all profits in excess of 8 per cent of the capital stock; or, possibly, from a recent law in Sweden (passed October 28, 1910), which proportions the rate of tax on corporations to the percentage of profit obtained on the capital. The Wisconsin legislature evidently had some doubts as to the constitutionality of this method of taxing corporations; for the table of rates is followed by a provision that it shall be deemed a separable part of the law, and, if declared invalid, the rates prescribed for individuals shall apply.

The personal property taxes which are abolished by the income tax law are those upon moneys, credits, stocks, bonds, personal ornaments, farm, orchard, and garden machinery, implements, etc. The amount of tax heretofore collected from such items was about $1,800,000. The only important items of personal property remaining subject to taxation are farm animals and merchants' and manufacturers' stock, but some relief is afforded in respect to them by a provision of the law that personal property tax receipts may be used as cash or as an offset in paying the income tax of the same year.

The Question of Constitutionality.

Practically the only limitation upon the taxing power in the Wisconsin Constitution is § 1 of article 8, which reads:

"The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe."

The amendment, which was ratified in 1908, added the following words:

"Taxes may also be imposed on incomes, privileges, and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided."

The Wisconsin income tax law was signed by the governor July 13, 1912, and, a few months later, the attorney general was requested to bring an action in equity for the purpose of enjoining the secretary of state and other state officers, including the tax commission, from paying out any state moneys or performing any other administrative acts in connection with the law, on the ground that the law was unconstitutional.

The attorney general having declined to bring the suit, the original jurisdiction of the supreme court was invoked, and, in the case of State ex rel. Bolens v. Frear, Secretary of State, leave was finally granted to bring the suit upon the express condition, however, that the question of whether or not such an action was properly within the original jurisdiction of the court should be reserved and argued with the demurrer upon the merits.

A large number of distinguished lawyers took part in the arguments, and so many briefs were filed *amicus curiæ*, that one attorney ventured the sarcastic remark that he was not aware that the court had so d—d many friends. The decision was not handed down until January 9th of this year. It was quite exhaustive, comprising nearly 100 pages of

the Wisconsin S. C. Reports (Income Tax Cases, 148 Wis. 456, 134 N. W. 673, 135 N. W. 164), and nothing more than a brief reference to it can be attempted in this article.

Upon the question of jurisdiction, the court held that the law made such a sweeping change in general taxation policy and methods of taxation throughout the state, and the resulting confusion would be so great if, after being in operation a year or two, it should be held invalid, that a question seriously affecting the prerogatives of the state was presented, and the exercise of the original jurisdiction of the supreme court was justified.

In answer to the contention that the law was a violation of the 14th Amendment to the Federal Constitution, the court held that such amendment "never was intended to lay upon the states an unbending rule of equal taxation; the states may make exemptions, levy different rates upon different classes, tax such property as they choose, and make such deductions as they choose, and so long as they obey their own Constitutions, and proceed within reasonable limits and general usage, there is no power to say then nay."

The progressive feature of the bill was sustained under Knowlton v. Moore, 178 U. S. 41–109, 44 L. ed. 969–996, 20 Sup. Ct. Rep. 747, and a doubt was expressed as to the right of the state to deny to nonresidents the exemptions which are allowed to residents.

The opponents of the law insisted that it violated the constitutional guaranties of local self-government by placing the power of appointment of the various assessors of incomes in the state tax commission, and permitting such commission to fix their salaries. The reply to this was that the assessors of income were not county, city, town, or village officers; and that there was therefore no improper delegation of legislative power.

It was further held that exemptions might be allowed to individuals, which were denied to firms; that there was not necessarily any injustice in permitting such persons as had paid personal property taxes to offset the amount of such taxes against their income tax; that the rental value of a residence occupied by the owner might be treated as income; that the income of wife and children might properly be taxed to the husband; that the law was not retroactive and void in that it taxed incomes received prior to its passage; and that corporations enjoyed privileges which would justify difference of treatment in respect of rates, exemptions, etc.

Two important questions were raised, which the court did not decide. The law provides in substance, (§ 1087m—2 subd. 3a and § 1087m—3) that a resident shall be taxed upon all of his income arising from rentals, stocks, bonds, securities, or evidences of indebtedness, whether the same be derived from sources within or without the state, but that the nonresident shall only be taxed on income derived from sources within the state; and where either person is engaged in business interstate in its character, he shall be taxed only on that portion of the income derived from the business transacted and property located within the state. To ascertain the proportion of the income taxable in Wisconsin, in the last-mentioned case, the same formula is used as in determining the proportion of capital stock employed in the state. This can, perhaps, be best illustrated by a concrete example. In the case of a concern doing business within and without the state, let it be supposed that the net profit or income is $12,000; the gross business done within the state is $50,000; the property located within the state is worth $20,000; the total business done within and without the state is $150,000, and the total property within and without the state is $60,000. Taking the second and third items for the numerator, and the last two for the denominator, we have the formula

$$\frac{50{,}000+20{,}000}{150{,}000+60{,}000}=\frac{70{,}000}{210{,}000}=\frac{1}{3} \text{ of } 12{,}000 = 4{,}000,$$

and it would thus appear that the concern would have to pay an income tax on $4,000.

Two fundamental objections were made to this plan: First, that the state could not tax the incomes of nonresidents, no matter from what source derived; and, second, that the attempt to tax a part of the profits derived from an

interstate business under the rule adopted must necessarily result in a taxation of the receipts of interstate commerce, and hence constitute a regulation thereof in contravention of the Federal Constitution. The court did not deem it necessary to pass upon these objections, as they were not of such a nature that they could be considered the inducement to, or as the compensation for, the balance of the law,—in other words, that even if they should be dropped out the law would remain intact in its fundamental and essential features.

Administration of the Law.

To build up the complicated machinery necessary to make a complete assessment of all the individuals and corporations subject to the income tax in the state, and to get this machinery into working order within a few weeks, was the tremendous task which confronted the tax commission when it became certain that the law would be sustained. A supervisor of the administrative department was chosen; the state was divided into thirty-nine taxing districts; and, after thorough civil-service examinations, assessors of income were chosen and appointed for each district. These men were appointed for a term of three years, and were in all respects independent of local influences. They were authorized to employ necessary clerical assistance, and in a few cases deputy assessors were appointed. Separate forms of income tax returns were provided for individuals, firms, guardians, trustees, etc., farmers, domestic corporations licensed to do business only in Wisconsin, domestic corporations licensed to do business in other states, and foreign corporations licensed to do business in Wisconsin. The time within which the returns must be made was fixed at April 1st, but was subsequently extended to May 1st. During the month of March and April over 10,000 letters of inquiry were received and answered.

The work of editing the thousands of returns which were received proved to be a very arduous one, and many novel and difficult questions were raised. It is obvious that the difficulties with which the taxpayer as well as the tax commission were confronted in this first year were very much more serious and numerous than they will be in any subsequent year. In so far as the administration of the tax has been successful, its success is no doubt due more to the centralized organization than to any other one cause. It is fairly certain that if the administration of the law had been left to local officials, dependent upon the votes of their neighbors for their election, nothing more than an insignificant sum could have been collected.

The Wisconsin income tax law differs widely from that of any other state, in the thoroughness with which the details of administration have been worked out. Of the sixteen printed pages which are covered by the law, about ten pages are devoted to the methods of administration. Penalties are prescribed for failure to make and file written returns, as also for false returns. All officials are required to preserve secrecy regarding the contents of the returns. The provisions for appeal and review are somewhat similar to those in force for the general property tax. A special board of review for each county is required to meet and hear complaints on the last Monday in July. This board consists of three resident taxpayers appointed by the tax commission, and the county clerk is required to keep a record of the proceedings. An appeal may be taken within twenty days from the decision of the board, to the state tax commission; but it is a noteworthy fact that only seven such appeals were taken in 1912, and those not in matters of importance.

The assessment of the corporations is wholly in the hands of the tax commission; corporations feeling aggrieved by any decision of the commission may, within six months after payment of the tax, bring an action against the state, in the circuit court of Dane county (the county in which the state capitol is located), to recover such part of the tax as shall exceed the amount the company should have paid.

Results.

The highest amount ever collected by means of a state income tax in times of peace is believed to have been $122,-

056.77, which was collected by the state of Virginia in 1907. The friends of the Wisconsin law were therefore prepared to be very well satisfied with the law if it should produce $1,000,000 the first year. The exact statistics are not attainable as yet, but it is known that the amount of income tax levied is approximately $3,400,000 of which nearly two thirds is assessed to the corporations. This amount largely exceeds the total amount collected for the whole United States in 1863, by the first year's administration of the Civil War income tax. It is about double the amount which was heretofore raised in Wisconsin by the taxation of those items of personal property now exempted, and only lacks about $700,000 of being sufficient to balance the whole amount heretofore raised from the taxation of all personal property (except, of course, public utilities, banks, etc.). It should be understood, however, that the actual yield of the tax will be reduced, possibly 25 per cent, by the offsetting of personal property receipts.

Under the terms of the law 10 per cent of the revenue derived from the tax is retained by the state, and is applied, so far as necessary, to the expenses of administration,—such expenses being borne wholly by the state; 20 per cent goes to the county, and 70 per cent to the town, city, or village in which the tax was assessed, levied, and collected. It thus appears that while the income tax is administered and assessed as if it were a state tax, the proceeds are refunded to the localities from which they emanate with the exception of a percentage retained by the state to cover the expenses of administration.

The population of Wisconsin is 2,333,860. The number of individuals, firms, etc., who were required to make income tax returns was about 175,000 or 7½ per cent. The number of such returns which showed taxable income was 46,575 or a trifle less than 1 per cent of the total population, or 26.6 per cent of the number which made returns.

The number of corporations subject to the income tax was 9,428, and 9,193 filed returns.

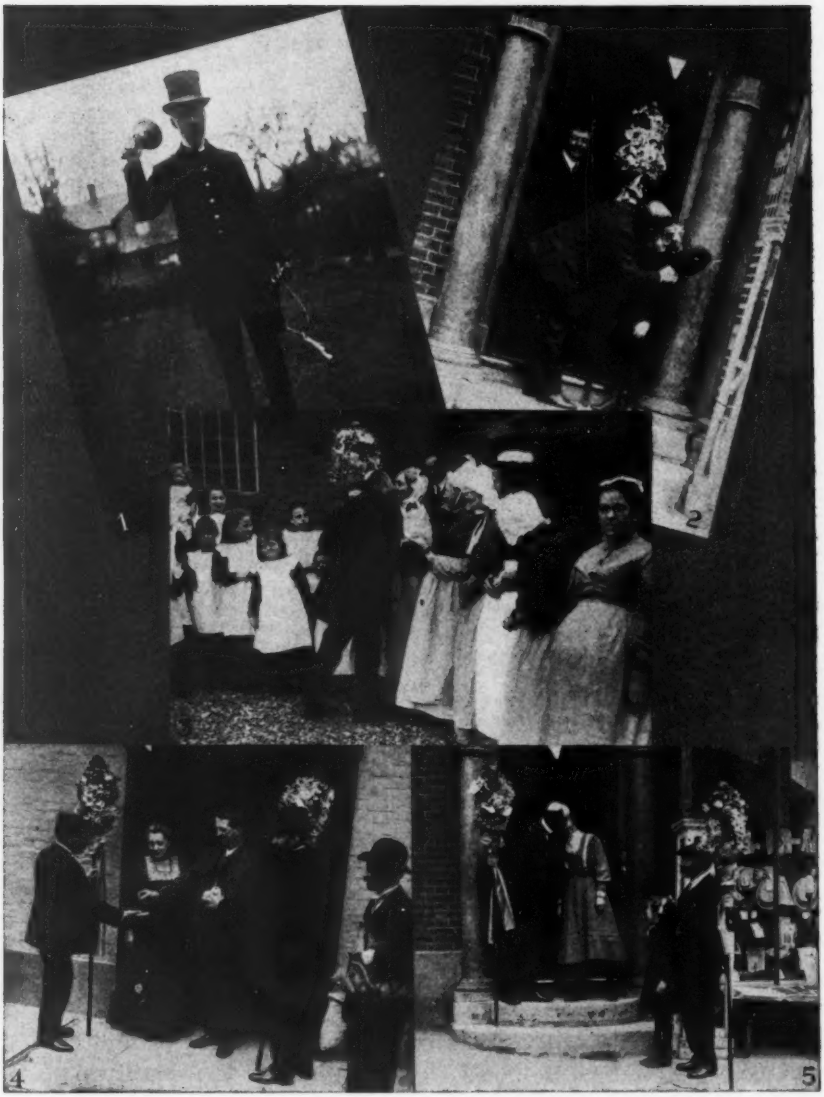
The number of corporate returns showing taxable income was 5,535, or 58.7 per cent of the whole.

The income tax was the chief issue at the November elections this year,—the Republican candidate advocating its retention, while the Democratic candidate was pledged to its repeal. The state gave Woodrow Wilson a plurality of about 30,000, but elected a republican governor and legislature by small majorities. The vote would seem to indicate that a majority of the people are still in favor of the tax.

The success which has attended the introduction of the income tax in Wisconsin will, no doubt, lead other states to pass similar laws.

Kenneth Kent Kenner

This system of levying all the taxes on consumption so that the consumers are saddled with all the burdens of government is an unjust system of taxation, and the only way to remedy the injustice and destroy the inequality is by a graduated system of income taxes that will make idle wealth as well as honest toil pay its just share of money needed to administer the National Government.—*Hon. William Sulzer.*



1. Beadle announcing the Tax Collector. 2. A little girl paying the tax. 3. A workhouse inmate paying the tax. 4. Man paying a penny instead of a kiss. 5. A young girl paying the tax.

[By ancient custom, in Hungerford, England, the collector annually calls for his taxes, which are paid by the women in kisses. No distinction is made between young and old, rich or poor. No one is overlooked.]

Single Taxation

BY HENRY DOWLING BYRNE

A TAX is, according to Webster's International Dictionary, "A charge, especially a pecuniary burden imposed by authority; specifically, a charge or burden, usually pecuniary, laid upon persons or property for public purposes; a forced contribution of wealth to meet the needs of a government."

A single tax on the value of the land irrespective of improvements in or on the land is the only just tax. The value of the land is either natural or created by the community. What is natural, by right, belongs to all. What is created by the community, by right, belongs to the community. A land value tax is not a land tax. A land value tax is a tax levied on the value of the land in proportion to the amount of the value of the land held, irrespective of improvements in or to the land. A land tax is a tax levied on the land in proportion to the amount of the land held, irrespective of the value of the land and irrespective of improvements in or on the land. The man who pays a land value tax, in all cases pays for what he gets and gets what he pays for. The man who pays a land tax, in one case pays for more than he gets, and in the other case gets more than he pays for. The man who pays a land value tax on land worth a hundred dollars an acre has the same advantage as the man who pays a land value tax on land worth a million dollars an acre,—both get the full product of their labor. The man who pays a land tax on land worth a hundred dollars an acre has to work his finger nails off, and the man who pays a land tax on land worth a million dollars an acre need never work, and let his finger nails grow to the ground. Since the land value tax is the only just tax, it becomes the only tax. Consequently the term "single tax" is a proper term for the land value tax.

The Single Tax Idea.

The single tax question is one of universal interest. It concerns everything and everybody. It upholds all that is right and condemns all that is wrong. It means the taxation of land values only. The rate to be high or low according to the actual needs of the various governments, and not to exceed the full rental value. To exceed the full rental value would be to impose upon the individual. If a government is bound to err, it should be bound to err in generosity.

The Adoption of the Single Tax.

The adoption of the single tax will bring about conformity to the natural law. It will do away with the mother graft of all grafts,—the land value graft. It will establish the fact that there are but two races, the human race and the race for a living.

The Churches.

Church people contend that the churches should not have to pay a land value tax. Why not? They have to pay their construction bills, their gas bills, their coal bills, and other bills. Why should they not have to pay for benefits received from the whole community? It may be argued that churches are a benefit to the community. All honest families, corporations, and institutions are a benefit to the community. The first duty of the community is to be honest with the church The first duty of the church is to be honest with the community. What do we mean by separation of church and state? There would not be the slightest ground, even

for imagination, that the churches are separated from the state if the churches were to pay taxes like other corporations. There is not the slightest ground, even for imagination, that the churches are separated from the state while the state favors the churches, above all other corporations, with freedom from taxation.

The Railroads.

It is almost universally contended that railroads should have to pay taxes on their franchises, because railroad corporations enjoy special privileges over the public, in the form of special right of way, watered stock, etc.

The land values of a country grow in proportion to the growth of improvements in or about that country. The railroads, the steamboat lines, and the steamship lines are the vine improvements along which all branch improvements flourish. The railroads, the steamboat lines and the steamship lines are nothing more than improved public highways.

HENRY DOWLING BYRNE

The people who want to collect golden eggs—land values—should not want to cripple or to kill the goose—the railroads—that lays them. Let us have no morbid curiosity cutting on the golden goose.

The fellow who would tax, fine, and damage suit the railroads out of existence, is just that kind of a fellow who would put America into China's old clothes.

So long as the public persists in preventing the perfection of the railroads, through the imposition of taxes in proportion to their nearness to perfection, just so long may the public look for grade-crossing horrors, etc.

So long as the people keep the railroads in a crippled condition, through the imposition of taxes on their improvements, and thus cause accidents, just so long shall watered stock be imposed upon the people to pay the damage suits imposed upon the railroad corporations by the people. Ten-thousand-dollar bills do not grow on the thorns, furzes, and nettles placed in the way of the railroads.

The railroad's course should be as free from purchase price and taxation as the steamboat's course and the steamship's course are free from purchase price and taxation. Under such a *régime*, ignorance, degradation, war, famine, and the like could not exist anywhere. Under such a *régime* it is becoming a question as to whether the powers shall recognize China, or whether China shall recognize the powers. Evidently China is beginning to be the pivot upon which turns a new order. Will China recognize the powers? bids fair to become the question of the near future. The nations of the earth may have to depart, one by one, from the ways of savagery before China will recognize them. The inability to adopt the single tax is surely the inability to depart from the ways of savagery.

Our present system of government is government on a brigandage basis. The brigand always took from his man in proportion to what his man possessed.

A government on the single tax basis would be a government on a business basis. The single taxer—the government official—would take from his man in proportion to the benefits received from the government—the community—not in proportion to the effects of his labor.

The grocer who would charge the millionaire in proportion to his ability to pay would go to the madhouse. The

grocer who would charge the pauper in proportion to his ability to pay would go to the poorhouse.

Since the whole people constitute our whole government, it is evident that a large part of our government is in the madhouse, and another large part is in the poorhouse; while other parts are on their way.

If the single tax were in force in New York city we should not see good filling material dumped in the ocean for the want of cheap railroad transportation to get it to Long Island and New Jersey. Here, again, we may see that our system gives us our marshes, our swamps, our mosquitoes, and our malaria.

The Streets of San Francisco.

After the great earthquake and fire in San Francisco the government saw that it would be well to rearrange the streets in a part of the burned section. But to change the streets from their old course meant to shift the land values here and there. The great land value grafters made strenuous objections, and nothing was done.

We have all heard that the common weal has first preference in America; but it is evident that the land value grafters had first preference in the above case.

So we may see that our present system is most dangerous; not so much because it is wrong, but because when we start wrong it brings pressure upon us to stay wrong.

Is it not the same system that brought all the nations of the past to their dooms?

The Single Tax the Only Hope.

No matter what is done to improve conditions in New York city the land value grafters, or situation value grafters, get the benefit.

When the price of gas is lowered from $1.00 a thousand cubic feet to 80 cents a thousand cubic feet the land value grafters, or situation value grafters, raise the price of land and raise the rents to eat up all the advantage.

When all the people of the city pay for the building of new subways the land value grafters, or situation value grafters, raise the price of land and raise the rents to eat up all the advantage.

For instance, let all the millionaires of New York city get together and spend their millions to make the great city a heaven for everybody, by giving to the Five Boroughs free gas and a perfect system of free transportation. What would be the result? Would it be of any great benefit to the working people? No. The land value grafters, or situation value grafters, would merely raise the price of land and raise the rents so as to eat up the values caused by the expenditure of the millions by the millionaires, or to make the people pay for the benefits enjoyed on the land value grafters, or situation value grafters, private estates at the millionaires' expense.

Perhaps the millionaires themselves are land value grafters, or situation value grafters, and consequently would have their money back in a hurry.

How I Became a Single Taxer.

One evening in 1894, while walking south on Twelfth street, between Locust and Olive streets, St. Louis, I saw a man standing on a box and holding a skeleton umbrella over his head, in front of General Grant's statute. I walked over and listened to him (Buchanan, I learned, was his name) trying to illustrate that the Dingley tariff would keep poverty out of the country just about as effectively as his skeleton umbrella would keep rain from falling on him. At the close of the meeting a man they called Sheridan Webster handed me a pamphlet. I took it home and read it that same night. Ever since that time I have tried to be a single taxer, both in word and in deed.

I believe in the single tax because I believe it to be right, and I believe that to do right is God's only command.

Henry Dowling Byrne.

Inheritance Taxation

BY PETER V. ROSS

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THE taxation of inheritances, which in recent years has attracted so much attention and assumed such large proportions, is of ancient origin. Nineteen centuries ago it was resorted to in Rome, perhaps having been introduced from Egypt, where it then seems to have been in operation; and during the Middle Ages traces of it were observable in England and on the Continent as an incident of feudal tenures. To-day Great Britain, France, Germany —in fact, practically all the nations of Europe—have adopted some system of inheritance taxation; so, indeed, have many of the colonies of Great Britain, the Spanish-American countries, Japan, and other nations of the world.

In the United States, before the end of the eighteenth century, the Federal government began the taxation of inheritances. The first tax of this nature was imposed by the stamp act of July 6, 1797, which was repealed five years later. The next tax was imposed by the war revenue act of July 1, 1862, amended two years later, and repealed July 14, 1870. The income tax provisions of the revenue act of August 27, 1894, embraced inheritances; but the scheme being indivisible, the inheritance tax fell when the income tax was declared unconstitutional. The next and last inheritance tax imposed by Congress was by the war revenue act of June 13, 1898, which, so far as the imposition of taxes on inheritances is concerned, was repealed April 12, 1902.

The several states of the Union began taxing inheritances in the first part of the last century, Pennsylvania leading off in 1826, and Louisiana following in 1828, Virginia in 1844, and Maryland in 1845. From time to time other states have fallen into line, until now thirty-eight of our American commonwealths are collecting revenue in this manner, and a majority of them from direct as well as collateral successions. During the last ten or fifteen years there has been a noticeable quickening of appreciation of the wholesomeness of inheritance taxation, which has been manifested not only in the extension of the system into jurisdictions where it hitherto had been unknown, but in the expansion of its scope of operation in those states where it was already in force, increasing rates and subjecting transfers previously exempted.

Justice or Injustice of System.

A great deal has been said and written for and against the system of taxing inheritances. However strongly it may commend itself to the unprejudiced mind, or to the person not immediately affected by it, adverse criticism and even untempered condemnation are not uncommon from individuals who have felt, or stand in apprehension of feeling, its effect in the abridgment of those privileges of wealth which, to their minds, are indispensable to personal happiness and social well-being.

Then there is that reluctance, quite as noticeable and inflexible in the presence of affluence as where poverty reigns, to contribute to the financial support of government. This disposition opposes every form of taxation, and those foremost in opposition are not infrequently those

who, by reason of extensive worldly possessions, may be peculiarly in need of the protection which government affords.

But it is encouraging to note a change coming over public thought. The sense of personal greed and desire for self-advancement is giving way to a consciousness which appreciates somewhat the responsibilities that accompany the possession of wealth, in some degree waives private interests for the general welfare, and uncomplainingly assumes the burdens incident to ushering in a better state of society. Individuals are becoming less given to evading their responsibilities to the government and the public at large, and more inclined to accept opportunities to do their part in bringing about an order of things more nearly approaching the ideal.

Writing on inheritance taxation over twenty years ago, Mr. Carnegie, who is peculiarly qualified to speak on the practical aspects of this question, said: "Of all forms of taxation, this seems the wisest. Men who continue hoarding great sums all their lives, the proper use of which for public ends would work good to the community, should be made to feel that the community, in the form of the state, cannot thus be deprived of its proper share. By taxing estates heavily at death the state marks its condemnation of the selfish millionaire's unworthy life. It is desirable that nations should go much further in this direction. Indeed, it is difficult to set bounds to the share of a rich man's estate which should go at his death to the public through the agency of the state, and by all means such taxes should be graduated, beginning at nothing upon moderate sums to dependents, and increasing rapidly as the amounts swell, until of the millionaire's hoard, as of Shylock's at least

"'The other half
Comes to the privy coffer of the state.'"[1]

No doubt injustice has in some instances been done in the name of inheritance taxation; but this has been an accident in the administration and enforcement of the law, rather than an evidence that it is wrong in principle. Probably no other system of taxation now in vogue rests upon a basis so just and equitable; for, in reducing the amount which beneficiaries of a decedent receive, it takes of that which they, in the great majority of cases, have had no part in producing, and which they succeed to at all only by grace of the authority or government for whose support the tax is exacted.

There can hardly be a more fit subject for taxation than unearned fortunes, nor a more appropriate season for imposing the tax upon them than during the transmission of the property to the persons appointed by the law or the will of the former owner to receive it upon his death. At a time when property is, by reason of death, without ownership, the state steps in and takes, as revenue, its share for the privilege it extends to the heir or devisee of receiving a portion; and if the diffusion of wealth is to be preferred to its concentration in the hands of those who have not produced it—and this seems to be the prevailing trend of public opinion—the inheritance tax offers a simple expedient for bringing about that result.

Special Features of Tax.

The inherent justice of inheritance taxation becomes more apparent when viewed in the light of its system of exempting gifts or estates of moderate size, and making the rates increase with the value of the property and the distance of relationship between the donor and donee. Naturally the exemptions vary in amount and as to the persons favored, under the different statutes, but they are usually liberal, and are larger in the case of lineal descendants and the surviving husband or wife than where strangers and collateral relatives are affected. Gifts to benevolent, educational, religious, and other charitable institutions are also exempted in nearly all of the states, but this exemption exists only in favor of domestic institutions; and its propriety, even as to them, has been doubted. It does not exist at all

[1] North American Review, June, 1889; September, 1906.

in Kentucky, and narrower bounds have been set to it in other states than were formerly recognized.

The most significant feature of inheritance taxes is the graduation of the rate according to the degree of relationship between donor and donee or the value of the estate or gift. To thus increase the burden of taxation with the remoteness of relationship between the parties is in harmony with general sentiment and presumably in accord with the degree of right to succeed to the property. It does not offend constitutional principles, for the question of discrimination between persons of different degrees of relationship is one of legislative discretion, limited, if at all, only by the rule of reasonableness and propriety.

The adoption of progressive rates, whereby the rate of taxation is made to increase with the value of the estate or gift, has come into special prominence within the past few years. It is based on the wholesome doctrine that ability to pay is the true basis of taxation; and, aside from its efficiency as a revenue measure, it affords a means of curtailing inheritable estates and thereby reducing swollen and unearned fortunes, without resorting to confiscatory measures or violating constitutional principles, especially when the advanced rate is imposed only upon the excess above the amount subject to the next lower rate. By making the rate in this way rapidly progressive above a certain point, a diffusion of wealth can be worked in the most natural way, for restriction is laid only on the inheritance of property, not on its original acquisition; and the burden of taxes is adjusted according to the bounty received and the ability to respond. Certainly a more democratic method of raising revenue would be difficult to devise.

Dire results have been prophesied of this feature, but it has not been carried far enough as yet to warrant apprehension from even the most fearful. Said Justice White:[2] "The grave consequences which it is asserted must arise in the future, if the right to levy a progressive tax is recognized, involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise where an arbitrary and confiscatory exaction is imposed, bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so. That the law which we have construed affords no ground for the contention that the tax imposed is arbitrary and confiscatory is obvious."

The term "inheritance tax," as generally employed, applies as well to gifts of property by will or in contemplation of death, as to inheritances or successions proper. And it is well understood that the tax is not on the property, but on the transmission or succession. The charge is not on the property itself, although the value of the property determines the amount of the tax, but rather upon the right or privilege to transmit or receive the property. Many authorities are coming to define the tax more specifically as a charge on the privilege of succession, or the privilege of the heir, devisee, or legatee to receive, rather than on the privilege of the donor or ancestor to give or have the law transmit his estate. Important constitutional as well as other considerations flow from this characteristic of inheritance taxation; since if the tax is not on property, but on the succession, then it is not within the purview of certain limitations placed by the organic law upon the power of taxation.

Constitutional Questions.

The provision common to most, if not all, of the Constitutions of the various states, that taxation shall be uniform and equal, does not apply to inheritance taxes, since they are imposed on the transmission of or succession to property, rather than on the property itself. The legislature may discriminate between relatives, and between relatives and

[2] Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747.

strangers; it may grant exemptions based on the value of the property, the degree of relationship of the parties, and the character of the donee as a charitable or benevolent institution; it may establish rates increasing with the value of the gift or the remoteness of the relationship between the parties, without offending the constitutional requirement of uniformity and equality in taxation. Classification is permissible, and the rule of uniformity and equality is complied with if all members of the same class are treated alike.

The equal protection of the laws guaranteed by the Federal Constitution is not violated by the progressive rates of taxation nor by the other discriminations in favor of lineal descendants and recipients of moderate-sized gifts, for such discrimination is based upon a reasonable classification, so long as members within the same class are accorded the same treatment.

A disposition is manifested in some instances to discriminate against nonresidents and aliens. If the nonresident is an artificial person, a foreign corporation, there is no constitutional objection to the discrimination, since it is not a "citizen" within the meaning of the provision of the Federal Constitution that the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states. But a natural person, who is a citizen of some state of the Union, would seem to stand in a more favorable position in regard to immunities conferred by other states on their citizens.

In the absence of any treaty restrictions, it is clear that a state, in the exercise of its power to regulate the manner and terms upon which property, real or personal, within its dominion shall be transmitted by will or succession to aliens, may impose an inheritance tax on such transmissions. There can be no valid objection to such a tax, whether imposed upon citizens and aliens alike, or upon aliens exclusively. It seems to be conceded, however, that the acquisition of property in this country by aliens is, to some extent, a proper subject for treaty regulation; and when the United States has entered into a treaty with another nation, according to citizens of the latter privileges enjoyed by citizens of the former in the matter of acquiring, holding, and transmitting property, and providing, expressly or by necessary implication, that they shall not be required to pay inheritance or succession taxes which citizens of the United States are not compelled to pay, the treaty will be regarded as the supreme law, and state statutes conflicting with it should yield. Not long since it was decided that the treaty with Norway and Sweden prevented a state of the Union from imposing any higher inheritance tax upon property devised or bequeathed by one of its citizens to a citizen of Norway or Sweden than it imposes in case of devises or bequests to its own citizens of the same degree of relationship to the testator under similar circumstances.

It not infrequently happens that personal property suffers a species of double taxation by reason of the circumstance that it is actually situated in one state, while the owner dies domiciled in another state. In such event the actual situs of the property is seized upon by the first state as warranting the imposition of an inheritance tax, and the legal situs of the property at the domicil of the decedent is taken as authorizing the imposition of another inheritance tax by the latter state. Indeed, the same state may assume either position, as the domicil of the deceased or the presence of his personalty within the state may require, in order to collect the tax. This form of double taxation, however unjust it may seem, and into whatever inconsistencies it may lead the taxing authorities, is not opposed to constitutional principles. The state wherein chattels are found may tax them because they enjoy the protection of its laws and are under its dominion; the state in which the decedent had his domicil may impose another tax because the transmission of the property is governed by its law.

This double taxation of personal property has naturally been the occasion of much unfavorable comment, and is being departed from in some states. It has presented serious problems, especially in the case of stocks, bonds, and securities deposited or physically present in

one state while their owner died domiciled in another.

There are statutes which forbid safe-deposit companies, on the death of a lessee of a box or safe, from delivering the contents to his heirs or personal representatives, except after notice to designate fiscal officers of the government, and requiring such corporations to retain a sufficient portion of such contents to pay the inheritance tax on the property on deposit or in safekeeping. Failure to obey the law renders the deposit company liable for the tax itself and for a heavy penalty besides. These statutes are not unconstitutional as applied to safe-deposit companies and other corporations doing a similar business. Nor are they unconstitutional when applied to lessees of safe-deposit boxes and their heirs and representatives, even in cases where boxes are rented jointly by two or more persons or by a partnership, and one of the partners or joint lessees dies. The enforcement of the law may result in delay and inconvenience to heirs and legatees, but delay is necessarily incident to the settlement and distribution of the estate of a decedent. And when the interests of the state are considered, it does not seem unreasonable that it should, through its proper representatives, be given opportunity to protect itself from loss of revenue through the withdrawal and concealment or transfer of securities and other valuable assets.

Liberal Interpretation of Statutes.

The statement is not infrequently met with, in the opinions of courts, that inheritance tax laws should be construed strictly against the government and liberally in favor of the taxpayer; that the government is bound to express its intention to tax in clear and unambiguous language; and that in case of doubt or ambiguity arising on the terms of the statute, every intendment is indulged against the taxing power. This is merely a restatement of a principle of interpretation usually applied to general tax laws. No satisfactory reason, however, has been advanced for such a rule; and it is doubtful, indeed, whether the rule has, to any considerable extent, been observed in the case of inheritance taxes. One would suppose that such laws, like any other statutes, should be given a reasonable and liberal interpretation with a view to effectuate the intention of the legislature. And it is gratifying to note that whatever the courts may have said on this question, they have, in fact, generally given inheritance tax statutes a liberal construction in favor of the government, by subjecting to taxation every transfer that could reasonably be brought within the purview of the law.

In some instances decisions have been rendered giving a restricted operation to statutes, but such decisions have usually been promptly followed with legislative enactments removing the restrictions and giving the tax a wider scope. This has been noticeably true in New York.

In that same attitude of mind that has given a liberal interpretation to inheritance tax statutes, the judiciary has, save in rare instances, upheld their constitutionality. As might be expected attacks on constitutional grounds have been frequent and vigorous, but they have, with few exceptions, been unavailing. Inheritance taxation, with its most advanced idea—progressive rates—seems now to be securely and permanently established as a revenue measure in a great majority of the American commonwealths; and so rapid has been its growth in popular favor and its adoption in state after state during recent years, that another decade bids fair to witness its extension throughout the Union.

P. V. Ross.

The Federal Corporation Tax

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WHEN the Federal corporation tax was enacted by Congress on the 5th day of April, 1909, great interest was manifested by the people at large as to its efficacy as a means of furnishing substantial revenue for public use. The operation of the tax has satisfied the people of its success as affording a means of revenue, while the corporations who opposed the enactment so vigorously at the time it was under consideration in Congress have found it not nearly so burdensome or oppressive as they apprehended. This is shown by the wonderfully small amount of litigation which has ensued as a result of the passage of the act.

It would have been natural to have supposed that with the passage of so novel and comprehensive a revenue act, affecting as it did the corporations possessing the means to resort to the courts whenever they see fit, that a great flood of litigation would naturally result. Notwithstanding this fact an examination of the reports shows that but very few cases have been so far decided relating to either the construction or the enforcement of the Federal corporation tax act.

Doubtless the credit for such a situation is largely due to the administrative branch of the national government. In the writer's opinion Mr. Cabell, the Commissioner of Internal Revenue, has administered the law so wisely and effectively as to remove much of the friction or the misunderstandings that would have otherwise inevitably arisen. It is the writer's purpose in this article to bring to the attention of the profession the more important of those decisions which have been delivered by the courts either in construing or in enforcing the provisions of the Federal corporation tax law.

Attention is first called to the decision of Judge Van Valkenberg in the case of United States v. Military Construction Company. (See Treasury Dept. Bulletin, 1774.) In this case the court spoke as follows:

"The Treasury Department has construed the present law to mean that all corporations organized for profit, and having a capital stock represented by shares, must make this return irrespective of whether or not their entire net annual income is over and above $5,000. So that, for a period of eighteen years legislation of this nature has been thus construed by the department charged with its administration. If this interpretation by the department is not obviously or clearly wrong, but is fairly supported by the language employed, the action during many years of the department charged with the execution of the statute should be respected, and not overruled except for cogent reasons. United States v. Finnell, 185 U. S. 236, 46 Atl. 890, 22 Sup. Ct. Rep. 633. Furthermore, as has been said, it may well be that this construction was in the mind of Congress when this legislation was enacted.

"It will be observed that in the present act the amount of the net annual income is not made an integral part of the description of the class of corporations, joint-stock companies, or associations made subject to the tax. Their essential characteristics are that they shall be organized for profit, and have a capital stock represented by shares, and that they shall be actually engaged in carrying on or doing business. The classification does not include those specifically exempted in the proviso, nor corpora-

tions generally not organized for profit, and not doing business in that sense. This interpretation that it is its inherent nature, and not its income, that stamps the corporation designated as subject to the tax, is supported by the decision of the Supreme Court in Flint v. Stone Tracy Co. 220 U. S. 107–144, et seq., 55 L. ed. 380, 410, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312. This is further made apparent by other provisions of the act. The return required is a somewhat complicated one. It consists of eight sections; the proper interpretation of which controls the determination of what the net income may be. This is a matter for the exercise of the official judgment and discretion of the Revenue Department; in order that it may exercise such judgment and discretion, it must have the facts before it. The officers of the corporation and those of the Revenue Department may differ as to the ultimate effect of such facts. The honorable Solicitor General in his opinion well said:

"'As well permit the corporation to determine for itself how much tax it is liable for, as permit it to so determine whether it is liable for any amount. The law in every respect is to be administered by the officers of the law, and not by those who are subject to it. Efficiency of administration would be difficult, and even impossible, if the corporations could determine each for itself whether or not they were liable for any amount of tax, and make or withhold returns accordingly.'

"Furthermore, if the obligation to make a return depends upon the amount of net annual income and lies within the discretion of the corporation itself, then by reason of the fluctuation in business affairs, the same corporation might deem itself charged with the duty of making a return in one year and absolved from that duty in another year, according to conditions. This would lead to endless confusion. Nor can it be successfully urged that corporations whose incomes are consistently small should be excused. The law to be effective must be uniform.

"It must not be forgotten that the revenues of the government are its life blood; without them it cannot exist. Taxes are imposed, in large measure, with reference to estimated needs; and the collection of such taxes must be effective and thorough in order that the estimated revenue may not fall short of known requirements. For these reasons, such statutes are construed with greater strictness in favor of the revenues.

"The duty of making these returns is one comparatively light to each corporation subject to the tax, and may easily and readily be provided for as a regular part of its business system. In the aggregate the burden thrown upon the collecting department of the government is a heavy one, and should not be increased by imposing upon it the added necessity of initiative in the discovery of delinquents. Its labors in that regard will be great enough if those subject to the tax are held to the full measure of duty contemplated by the law. If it were left to each corporation to determine whether it need make the return provided for, there can be little doubt that the number of delinquents would be largely increased. It would follow either that an added burden of investigation would be cast upon the Revenue Department, or that the revenues would be greatly diminished. The court should not lean to a construction which would contribute to either result. If the present law is deficient, or unduly harsh in its terms, it should be so amended as to enable its administration to meet the requirements of justice and the necessity of particular cases.

"For the foregoing reason the demurrer to the answer will be sustained."

Again, attorneys acting as counsel for mining corporations will be interested in reading the opinion of Judge Polk in Strattons Independence (Limited) v. Howbert. (See Treasury Dept. Bulletin, 1796.) In this case a definition was given to what constituted net income of a mining company, as well as the meaning of "depreciation." In regard to the first the court spoke as follows:

"As to what is meant by the words 'net income' the relevancy of this results, of course, from the fact that the statute imposes an excise tax of 1 per cent on such net income. Does 'net income,' as thus used, contemplate an allowance in

favor of the company for ore in place extracted from the property, or is it to be determined without such allowance? According to ordinary understanding it is undoubtedly true that in the operation of such corporations the ore extracted is not deemed an element to be reckoned with in determining the net income. In popular sense the net income of mining properties is the value of what is extracted after deducting the cost of extraction and treatment, and the cost of administering the company which may be conducting the operations, and finally after a reasonable reservation for contingencies. This is true not only as a matter of general understanding, but has been held uniformly by the courts to be a proper rule in determining whether or not a dividend is declarable by such companies. The doctrine as deduced from People ex rel. Verde Copper Co. v. Roberts, 156 N. Y. 585, 51 N. E. 293; Morawetz on Private Corporations, § 442, and other authorities, is that the net income of a mining property for the purposes of dividends does not take into account so-called waste of the property by reason of the extraction of ore in place, but that such is to be determined by a comparison of the proceeds of the company, after a deduction for operation, expenses of the company, and such reasonable contingencies as may in the light of experience be expected. The following English cases, cited by the United States attorney are in point upon this: Rex v. Atwood, 30 Rev. Rep. 322; Lee v. Newchatel Asphalte Co. L. R. 41 Ch. Div. p. 1; Coltness Iron Co. v. Black, L. R. 6 App. Cas. p. 315, 51 L. J. Q. B. N. S. 626, 45 L. T. N. S. 145, 29 Week. Rep. 717, 46 J. P. 20; Wilmer v. McNamara & Co. [1895] 2 Ch. p. 245; 64 L. J. Ch. N. S. 516, 13 Reports, 513, 72 L. T. N. S. 552, 43 Week. Rep. 519.

"If, therefore, the net income is not affected for the purposes of dividends by the amount of ore extracted, neither should it be affected by that circumstance for the purpose of an excise tax. We conclude, therefore, that the words 'net income' do not carry with them any contemplation of law that there shall be such a deduction as plaintiffs here claim."

The court next took up the question as to whether the statutory provision required a reasonable allowance for the depreciation of property, requiring in the case of mining corporations, a tax for ore in place extracted therefrom. Passing upon this question the court spoke as follows:

"It is claimed by the plaintiff that this provision distinguishes the case from the American and English authorities above referred to. This contention, if sustained, is of far-reaching effect. Its practical result will be to free mining companies from any substantial obligations under this statute, since the value of ore in place when extracted, plus the cost of extraction and the several other items which are properly allowable under the statute as against the proceeds therefrom, will, in practically all instances, leave little or nothing as the net income to be assessed by the government. Of course the results of a given construction are not to be calculated with if the intent of the statute is plain, and if the statutory intent is clear that such corporations are exempt, the result is not a matter of judicial concern. At the same time, in determining what is the meaning of a statute, the effect of a construction contended for is of some relevancy as throwing light upon the congressional intent. We have here a class of corporations which owe their possession of property at all to a very liberal system of our government by which mining property is acquired, being simply by possession, development, and final payment of what is in many cases an insignificant amount as compared with the value of the property. We are also dealing with a class of corporations to whom the use of the corporate functions is perhaps of more value and importance than in any other branch of industry. Mining is essentially a class of activity which owes its life to aggregate contributions, rather than individual enterprise. The statute, which finds its justification in the power to tax the carrying on or doing business, is peculiarly applicable to mining corporations in which the corporate function is of such value. Viewing the matter from these two standpoints, therefore,—one, the source from which the property comes, and the other, the value of the

corporate life,—there results an initial presumption that Congress had in mind this class of corporations, along with others, and that unless the terms of the statute otherwise demonstrate, they are to be considered as included within the provisions of the act.

"The ordinary definition of depreciation is the lessening of value. As applied to mining properties, the word carried with it, as in the case of any other business, the idea of deterioration in visible improvements, such as mills and other surface structures, and perhaps the underground improvements, so far as they are put in by the hand of man, and therefore, speaking popularly, when we think of depreciation in mining properties we think of a lessening in value by time or perhaps by accident, of those physical elements which go to develop and to improve the property. Now does this meaning, commonly entertained and accepted, and which is common to every class of corporations, become enlarged in case of mining companies so as to make the extraction of ore likewise an element of depreciation? The court's view is that it does not. This conclusion is in part induced by the reasons which have been above discussed in connection with the term 'net income' and in part by the peculiar nature of the mining business. This latter is *sui generis*. It lives by dying. It is a business that is intrinsically uncertain. The segregation of part of a stock of goods is a definite detraction from the whole. The excavation of a body of ore, however, may reveal other bodies and result in immeasurable increment. The taking out of ore, while in a sense depreciation from the body, very often leads to the revealing of still larger bodies, and thus results not in a lessening of the value of the claims, but in a great increase in such value. Mining excavation when properly conducted is very often more of a development than a waste or a detraction. As applied to this class of corporation, having as its purpose to exhaust—it may be a year hence or a hundred years hence—the body of ore for profit, the mere fact that ore may be extracted does not, in my judgment, make the value of such ore an element to be classed and deducted as a depreciation of the property. The court, therefore, holds as to this second provision of the statute that the extraction of ore does not constitute a credit in favor of mining companies upon the account between them and the government when this excise tax is to be assessed."

A question which will interest receivers of insolvent corporations was passed upon by the United States district court for the southern district of New York, in Pennsylvania Steel Co. v. New York City R. Co. 193 Fed. 286. (See same case, 176 Fed. 471.) The holding of the court in this case was that the Federal corporation tax act for purposes of taxation does not include the property of street railway companies in the hands of receivers appointed by Federal courts, nothwithstanding the property assessed did not include the corporation's franchise to be a corporation, and its organization was maintained.

It may well be doubted whether the decision of the lower court will be sustained if the question is ever appealed to the United States Supreme Court.

Again, attention is called to the decision of the New Jersey Federal court in United States v. General Inspection & Loading Co. 192 Fed. 223. Here it was held that a corporation which has continued in business through a calendar year cannot evade liability for the payment of the Federal corporation tax by dissolving the corporation before the time when it is required to make a return of its business to the collector of internal revenue and before the time for the assessment of the tax.

Attention is called to one case which, while not perhaps possessing as much general interest as those already cited, will be of particular interest to attorneys for insurance companies. I refer to the case of Mutual Ben. L. Ins. Co. v. Herold, 198 Fed. 199. In that case the following points were decided:

"Corporation tax act (act Congress August 5, 1909, chap. 6, 36 Stat. at L. 112, U. S. Comp. Stat. Supp. 1911, p. 946), § 38, imposes an excise tax on insurance companies equivalent to 1 per cent on the entire net income above $5,000, received by it from all sources during the year, exclusive of amounts

received by it as dividends on stock of other corporations, etc., subject to the tax, such income to be ascertained by deducting all losses sustained and not compensated by insurance or otherwise, including a reasonable allowance for depreciation and sums other than dividends paid within the year on policy and annuity contracts, and the net addition, if any, required by law, to be made within the year to reserve funds. Held, that the word 'dividends' was used in such act in its popular sense as representing profits, and that so-called dividends of a mutual company doing business on the level premium plan, consisting merely of the portion of the loading of the premium charged in excess of the cost of insurance and returned annually to the policy holders after the first year so far as the same were used to reduce subsequent premiums, were not 'income . . . received,' and were therefore not subject to taxation. Such rule, however, does not apply to a 'dividend' declared in the case of a full-paid participating policy wherein the policy holder has no further premium payments to make, which dividend constitutes a participation in the profits and incomes of the invested funds of the company.

"Where a mutual insurance company issued supplementary policy contracts, by which the amount due on policies that had matured was paid in annual instalments for a given term of years, or during the lifetime of the beneficiary, instead of in one sum, and to secure such payments was required by state law to maintain a reserve, it was entitled to deduct such reserve from its income received in determining the amount on which it was liable for excise taxation under corporation tax act . . . providing for deduction of the net addition, if any, required by law to be made within the year to reserve funds.

"It was held that the word 'income' as used in such act meant that which had 'come in' or had been already received, and that the net income so taxable should be determined on a cash, as distinguished from a revenue, basis, and did not include uncollected and deferred premiums and interests, accrued and due, but not actually received; and, further, that an ordinary expenditure by a mutual life insurance company for renewal of office furniture and equipment did not constitute assets, but was rather an expense of maintenance and operation which it was entitled to deduct in determining the net income on which it was taxable."

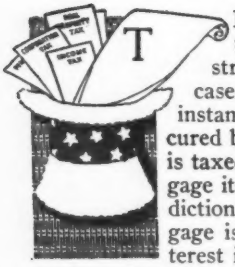
Finally attention is called to the case of Emery, Bird, Thayer Realty Co. v. United States, 198 Fed. 242, which if sustained by the United States Supreme Court will have a very marked effect in the matter of future forms of incorporation. In this case the holding of the court was as follows:

That under § 38 of the Federal corporation tax law, which provides that every corporation organized for profit and having a capital stock represented by shares shall be subject to a special excise tax with respect to the carrying on or doing of business by the corporation, a corporation organized solely for the purpose of taking over and holding the real estate and leasehold interests owned by a dry-goods corporation, leasing such property to the dry-goods corporation, collecting the rents and distributing them among the stockholders, and which has actually executed a long-term lease of said property to the dry-goods corporation and surrendered the management and control thereof, is not subject to the tax, although it was organized under a provision of law relative to the organization of business and manufacturing corporations for profit. This for the reason that, even though a corporation be deemed to have been organized for business purposes, yet if it abstains from doing business, it is not subject to the tax.

Hu. G. Frost

Theories of Mortgage Taxation

BY WILLIS A. ESTRICH



THE term "mortgage taxation" is not strictly accurate in all cases. For it is, in some instances, the debt secured by the mortgage that is taxed, and not the mortgage itself. In those jurisdictions in which the mortgage is regarded as an interest in real estate as also in those in which there is a mortgage recording tax, it is perhaps accurate to speak of this form of taxation as "mortgage taxation." The term, however, has been so commonly used and is so well understood that it will be used throughout this article.

The difficulties which confront the taxing authorities in taxing mortgages are similar to those with which the authorities are met generally in the taxation of personal property, and especially the taxation of credits. Although it is necessary, in order to perfect the lien of a mortgage, at least as against subsequent mortgagees in good faith, that such mortgage shall become a matter of public record, it is recognized that this form of property very frequently escapes taxation. The true ownership is concealed from the assessing officers by putting it in the name of nonresidents, the mortgage is withheld from record, and there are other ways in which taxation is escaped.

Apart from the difficulties which confront the taxing authorities in obtaining a true list of mortgages which are subject to taxation, there are certain economic questions presented. The consensus of economic opinion is that it is unwise to tax mortgages at all.[1] These questions, together with the difficulties presented by this form of taxation, have given rise to various theories of mortgage taxation.

Double Taxation Theory.

The first of the forms of mortgage taxation may be called the double taxation theory, although it is quite well established that it is not open to this objection from a legal standpoint[2]. Under this system of taxation, the debt secured by the mortgage may be taxed to the mortgagee, although the mortgagor is taxed on the full value of the land mortgaged. It is apparent that this system increases the assessable valuation by the amount of the mortgage debt, assuming that all property is taxed at its full value. To bring this system of taxation forcibly before the reader, let us resort to illustration. John Doe, possessed of $1,000, is the tenant of Richard Roe on Blackacre, valued at $10,000. The taxable value of the property of these two men is, then, $11,000. But should the tenant purchase the land and apply in payment thereof his $1,000, and give his note secured by mortgage for the balance, he would have taxable property valued at $10,000, the value of Blackacre. His former landlord would have as taxable property the money received from the sale and in addition thereto the note and mortgage held by him, making his total valuation $10,000. Now the taxable value of the property of these two men is $20,000, or an increase equal to the value of the mortgage. There can be no claim that there has been an increase in property, but only a shifting of title and the creation of credits. Although, as stated above, this is not open to the objection, legally, that it is double taxation, it is certainly open to some economic objections.

The supreme court of Utah[3] makes

[1] Mortgage Taxation in Wisconsin. T. S. Adams. Quar. Jour. Econ. vol. 22, p. 2.

[2] Stumpf v. Storz, 23 L.R.A.(N.S.) 152, and note.

[3] Judge v. Spencer, 15 Utah, 242, 48 Pac. 1097.

what is as good a defense as, possibly, can be made of such a system when, speaking of a mortgage, it is said: "Being thus a species of property distinct from other property, its owner or holder, when residing within the state, is assessed and taxed as the owner of money in use, and not upon an interest in the land, which is merely pledged as security for the return of the money loaned. Land is useful and productive, and its value is estimated, for the purposes of taxation, in accordance with its income and usefulness. So a mortgage represents a debt which has value and produces an income, and its value should be estimated accordingly, for like purposes. The products of the soil constitute the income of the owner. The interest on the money loaned constitutes the income of the holder of the mortgage. The two species of property are entirely separate, represent different values; and, on principle, it would seem, each should contribute a just share of the burdens of government, however difficult it may be in practice to have each owner do so."

The apparent theory on which the court attempts to justify this form of taxation is the fact that the mortgage produces an income. In another jurisdiction, it has been held that the mortgage is taxable although it does not bear interest, and, therefore, produces no income.[4]

The supreme court of California took a different view of the validity of this form of taxation even prior to the adoption of the Constitution of 1875, of which mention will be made below.

In holding that a debt secured by a mortgage is not taxable, the court treats the mortgage debt in its true nature, that is, as a credit, and says: "A credit has no value other than the value it has acquired by reason of the probability that the property having present actual value, upon which a tax is levied and collected, will be applied to the satisfaction of the claim it represents;" and on the question of taxation of such credits says: "He who has the property in possession must be taxed on its value, and the value once taxed cannot be retaxed without a violation of the constitutional provision that each value shall be taxed proportionately to the sum of all values."[5] This case treats the mortgage indebtedness in its true character. Whether the tax on the indebtedness shall be paid by the mortgagee or the mortgagor, there certainly should be no tax on imaginary values under a system of property taxation. To remedy these evils, constitutional amendments have been adopted and legislation enacted on another theory of mortgage taxation, which, for convenience, will be designated as the—

Exemption Theory.

It should not be understood from this designation, however, that the mortgagee escapes taxation; for it most frequently occurs that the holder of the mortgage is ultimately held liable for the tax, while the mortgagor is allowed to deduct the amount of the mortgage debt from the assessed value of his real estate, or, as in the recent New Jersey statute, he is required to pay the tax, and is then entitled to a credit on interest.

Article 13 of the Constitution of California of 1875 provides that a mortgage, deed of trust, contract, or other obligation by which a debt is secured, for the purpose of assessment and taxation, shall be deemed and treated as an interest in the property affected thereby; and, except as to railroads and other quasi public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property; and the value of such security shall be assessed and taxed to the owner thereof in the county, city, or district in which the property affected thereby is situated.

The New Jersey statute, which is fairly representative of the statutes which have been enacted on this subject, provides that "no mortgage, or debt secured by mortgage, on real property which is taxed in this state, shall be listed for taxation, and no deduction from the as-

[4] Perry County v. Troutman, 144 Pa. 361, 22 Atl. 705.

[5] People v. Labernia Sav. & L. Soc. 51 Cal. 243, 21 Am. Rep. 704.

sessed value of real property shall be made by the assessor on account of any mortgage debt; but the mortgagor or owner of the property paying the tax on mortgaged real property shall be entitled to credit on the interest payable on the mortgage for so much of the tax as is equal to the tax rate applied to the amount due on the mortgage, except when the parties have otherwise agreed, or where the mortgage is an investment of funds not subject to taxation, or where the parties have lawfully agreed that no deduction shall be made from the taxable value of the lands by reason of the mortgage." [6]

It is apparent that this form avoids the double taxation feature entirely, for the taxable value of the property, in any event, cannot exceed the value of actual property, unless the assessed valuation should exceed the value thereof. In the working out of this system, some objectionable features have been discovered, but they are few compared with those of the double taxation system.

The theory of these enactments, as is apparent from the reading thereof, is to require the mortgagee to pay the tax on the amount of the mortgage debt and relieve the mortgagor from this burden, and it has been held that there can be no recovery of the amount thus paid by the mortgagee.[7] It is specifically provided in the New Jersey act above set out that this burden may be shifted by agreement. An earlier New Jersey statute (act of April 17, 1876, Rev. p. 1174) providing that the owners of lands within certain counties and cities might agree not to apply for any deduction, by reason of any mortgage, from the taxable valuation of such lands embraced in the mortgage, and that upon claiming a deduction in violation of such agreement, the mortgage should become immediately due and payable, was held valid.[8] Where, however, the property given to secure the mortgage is itself exempt from taxation so that there can be no deduction by the mortgagor, the mortgage is taxable to the mortgagee.[9]

An earlier New Jersey statute, in general similar to the above-mentioned one, in conjunction with another statute, resulted in shifting the burden of taxation to the mortgagor. The statute referred to was an act supplementary to the charter of a city within the state, which exempted such city from the operation of the general tax law and subjected it to a special system of taxation peculiar to itself. Among other things, it was provided that all lands lying within the city should be assessed at their full value, and that in assessing lands no deduction should be made for mortgage debts, and that in the schedule of property made taxable against residents in the city mortgages were omitted. It was sought to tax a mortgage held by a nonresident of the city on property within the city, at the place of his residence, on the theory that, unless he was thus taxed on the mortgage, he would escape taxation altogether. The right to so tax the mortgagee was denied, and with reference to the reason of the statute, the court states that the manufacturing interests of the city require capital, and the city has virtually said it is believed their prosperity will be promoted by holding out inducements for the investment of capital on city security, and that they are willing therefore as borrowers to pay the tax upon money loaned upon mortgage within the city, and that the lender shall be exempt.[10]

The Wisconsin act exempting mortgages was attacked [11] on the ground that it made a discrimination between railway and general property. This act provides that any mortgage interest in real estate shall be regarded as realty, and subject to the next provision be separately assessed for taxation in the taxing district where the land is located, the value of the equity being assessed to the mortgagor, such value to be regarded as the balance between the whole value and that

[6] Laws 1910, p. 5089, § 10.
[7] Pond v. Causdell, 23 N. J. Eq. 181.
[8] Kase v. Bennett, 54 N. J. Eq. 97, 33 Atl. 248.
[9] State, Angle, Prosecutor, v. Lantz, 53 N. J. L. 578, 22 Atl. 49.
[10] State, Van Winkle, Prosecutor, v. Massaker, 26 N. J. L. 564.
[11] Chicago & N. W. R. Co. v. State, 128 Wis. 553, 108 N. W. 557.

of the mortgage interest; and in the next provision, providing that at the option of the mortgagor the mortgage interest and the value of the equity shall be assessed together, without separate valuation, the same as if the land were unencumbered; such combined valuation not to exceed the just value of the land as unencumbered property.[12] It was urged that this act made a fatal discrimination in assessment between railway property and general property in that with reference to general property, regardless of the amount of credit, whether less or many times the value in form securing the same, the value of such land must necessarily be the measure of the possible assessment as to both lands and credit, and so it was within the probabilities that large amounts of property in the nature of credits not in any legitimate sense representing interest in land might escape taxation under the form of law, while the property of railway companies would be assessed directly or indirectly, and that it was within the probability that such result occurred as to the assessment which was being contested. The court took the view, however, that the mortgage interest carried the mortgage indebtedness only to the extent to which the mortgage would pay the indebtedness, and therefore held that the statute was not open to the objection.

An early Massachusetts statute to relieve property from double taxation in certain cases provided that when any person has an interest in taxable real estate as holder of a duly recorded mortgage, the amount of his interest as mortgagee shall be assessed as real estate; and then provided that any law on mortgage as real estate and taxable as real estate is not to be included among debts taxable as personal property.[13] The bonds of a corporation secured by a mortgage of its lands situated within the state, executed and delivered to trustees, were held to come within this exception, and not to be taxable, where the corporation paid taxes on lands.[14] But where the bonds are secured by real estate and personal property of a foreign corporation situated in different states, the bonds may be taxed.[15]

The wisdom of requiring the mortgage to be taxed at the situs of the real estate is illustrated by an early experience of Oregon. Prior to the enactment of a mortgage exemption law in that state, the mortgage was taxed under the general tax law as a credit at the residence of the mortgagee, and the debtor allowed to deduct the amount of the mortgage indebtedness from his assessment, provided the debt was owing in the state. It resulted from this that in a county where there were a large number of mortgages on real estate, held by residents of other parts of the state, the value of lands left subject to taxation was very much reduced, thus effectually removing from the county, so far as purposes of taxation were concerned, real estate values. To remedy this situation the legislature enacted a law providing that a mortgage shall, for purposes of assessment and taxation, be deemed and treated as an interest in real property, and shall be assessed in the county, city, or district in which the land or real property affected by such security is situated. This law, however, was made to apply only where land "situate in no more than one county" is made security for a debt, thus in effect exempting from its operation mortgages on land situate in more than one county. This was held to violate the requirement as to uniformity, and also that forbidding legislation for the assessment and collection of taxes, and therefore void.[16]

Mortgage Recording Tax.

The most recent form of mortgage taxation is the mortgage recording tax adopted by some states.[17]

[12] Laws of 1903, p. 601, chap. 378.

[13] Statute 1881, chap. 304.

[14] Knight v. Boston, 159 Mass. 551, 35 N. E. 86.

[15] Brooks v. West Springfield, 193 Mass. 190, 79 N. E. 337.

[16] Dundee Mortg. Trust Invest. Co. v. School Dist. No. 1, 19 Fed. 359, s. c. 10 Sawy. 52, 21 Fed. 151.

[17] New York.—Chap. 532, Acts of 1906; chap. 340, Acts of 1907; chap. 412, Acts of 1909. Alabama.—Acts of 1903, p. 227; Acts of 1907, p. 403. Minnesota.—Chap. 328, Acts of 1907, And Michigan.—Act No. 91, Public Acts 1911.

This form of taxation provides for a small tax or fee, usually 50 cents on each $100 and each remaining major fraction thereof, of the debt secured by mortgage, payable at the time of record. The mortgage is thereafter exempt from other forms of taxation. There is no difference in the amount due under the statutes, whether the mortgage is for one or ten years, for the tax is due only once. This form does not avoid the objectionable feature of double taxation; the rate is so low, however, that the objection is not serious in this regard, and the assessment of all recorded mortgages is secured. It is urged in its support that, on account of the low rate and of the fact that a mortgage that has paid the tax is exempt from other taxation, there is an inducement to mortgagees to disclose their securities to the assessing officers.

The constitutionality of the Minnesota law was assailed[18] on the ground that it violated the constitutional requirement that taxes shall be uniform upon all subjects of the same class. In holding that it was not open to this objection, the court states that all property belonging to the same class must be treated alike, that there must be no discrimination between the subjects of that class, and the same means and methods must be applied impartially to all the constituent elements of the class. It is then stated that the amount of the debt secured by the lien furnishes the normal and natural standard for measuring the amount of taxes which shall be paid when a mortgage is recorded under this statute. The manner in which the value of the lien is to be determined must necessarily be left to the legislature, and it certainly seems reasonable to take for this purpose the face value of the debt secured; that is, the valuation declared by the parties themselves. The attempt to make the actual, instead of the face, value of the security the basis for estimating the tax, would be utterly impracticable. The court then refers to the provision of the statute that the fee is due only once, regardless of the time when the debt matures, and states that the security is regarded as the same whether the debt is payable in one or in ten years; and as the tax is on the security, and not on the money secured, it operates uniformly upon all the subjects of the class. In reference to the provision of the act under consideration, that if any mortgage shall describe any real estate situated outside of the state, the tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real property therein described situated in this state bears to the value of the whole of the real estate described therein, the court states that this, instead of being a ground of objection to the statute, is in fact made necessary by the requirement of uniformity; and as the tax is imposed upon the security, and not upon the debt, there would have been an absence of uniformity if the statute had not provided for the reduction of the tax in proportion to the value of the foreign security not taxable in this state.

It was also urged in this case that, the mortgagee being a foreign corporation, it was exempt from the payment of such tax under the provision of the state laws, that every foreign life insurance company doing business in the state shall pay annually a sum equal to 2 per cent of all premiums received by it in the state, in cash or otherwise, during the preceding year; and that this payment shall be in lieu of all other taxes except those upon real and personal property owned by it in the state, which shall be taxed the same as like property of individuals, was cited in support of this objection; and, further, the provision in the act itself is cited, that the act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law or is taxed upon the basis of gross earnings or other methods of computation in lieu of all other taxes. The court was of the opinion that the 2 per cent on the amount of premiums received is not a tax on the gross earnings of the insurance company, since such premiums may constitute but an insignificant portion of the gross earnings of the company, even from business transactions in the state. It is further stated that a for-

[18] Mutual Ben. L. Ins. Co. v. Martin County, 104 Minn. 179, 116 N. W. 572.

eign insurance company may practically cease writing insurance within the state, and thus reduce its income from premiums to an insignificant amount, and yet invest millions of dollars within the state and receive a large income therefrom; and therefore it was not exempt from the payment of the tax. The constitutionality of this act with reference to savings banks has been sustained also.[19]

Another feature of this law was attacked as unconstitutional in State ex rel. Hildebrandt v. Fitzgerald, 117 Minn. 192, 134 N. W. 728, where it was urged that it was unconstitutional because it did not apply to mortgages less than $50. The provision of the law in this regard is that a tax of 50 cents is imposed upon each $100 or major fraction thereof of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situated within this state. The court construes the act as evidencing an intent to fix a rate of ½ of 1 per cent applicable to all mortgages, and that the unit or measure may be used where it can be applied, but that as to mortgages that are too small to be measured by the unit provided, the rate of ½ of 1 per cent was intended to apply, and the constitutionality of the act was sustained.

The constitutionality of the Michigan act, which is similar to the Minnesota act, has also been raised.[20] In arriving at the taxable value of the property of a corporation, the city of Detroit attempted to include mortgages held by the corporation on which it had paid the recording tax. The constitutionality of the act was raised by the city on the ground that it was at most only an act to provide for the collection of the specific tax on mortgages for state and county purposes, and in no way applied to the assessment of taxes in the city of Detroit for the general purposes of the municipal government, and that, having failed to provide for such city and also township, school district, village, and other municipal taxes, the act was void for want of uniformity of taxation. It was held, however, that the act exempted mortgages which had paid the recording tax from all other taxation, and therefore it was not open to the objection urged against it.

The Michigan act further provides that no tax shall be imposed upon any debt or obligation which is, or which under any contingency may be, secured by a mortgage upon real estate belonging to certain enumerated institutions; and it was urged that it violated the constitutional rule of uniformity of taxation in this regard. This contention was also overruled, the court stating that the same reason which impelled the exemptions as to the property of such institutions would naturally apply to their obligations.

The constitutionality of this form of mortgage taxation seems, therefore, to be established. As to its wisdom there may be a difference of opinion. It is a form of taxation of credits which is open to little objection, because the rate is so low as to be negligible.

The second of the above-enumerated theories is the one that has most points in its favor as a system of property taxation. It recognizes that there can be no increase in property by the creation of credits. It is certain, for it obtains a list of the property where it is situated; and if the debtor does not ask for his deduction, he must pay the tax, or, in some instances, must pay the tax in any event, and is then entitled to credit on the mortgage debt. In other words, the taxing authorities are certain to obtain a list of all the property of this nature which is recognized as taxable. And, finally, it avoids the feature of double taxation, which at least is objectionable from an economic standpoint.

Willis A. Estrich

[19] State v. Farmers' & M. Sav. Bank, 114 Minn. 95, 130 N. W. 445, 851, — L.R.A.(N.S.) —.

[20] Union Trust Co. v Detroit, — Mich. —, 137 N. W. 122.

Taxes and Prosperity

BY ALMOND G. SHEPARD

THE use of the words "taxes" and "prosperity" in conjunction suggests some obvious distinctions between them,—taxes we have always with us; the tax collector is a constant visitor, always and generally at the most inopportune times, intruding upon us; prosperity, on the other hand, to the majority is either a total stranger or at the best a most infrequent visitor. To the tax collector the latch string is never out, while we meet prosperity with open arms if it comes our way.

While there are these and perhaps many other obvious distinctions between taxes and prosperity, nevertheless the one has a direct effect upon the other. The purpose of this article is briefly to comment upon the effect of taxes upon prosperity, and prosperity not only to the individual but to municipal corporations.

Defects in Present Methods.

To summarize, it is attempted to show:

1. That the present system of taxation favors the large cities, and discriminates against the smaller municipalities and rural districts.

2. Hence it is repressive of industrial growth in the small cities and villages, and is one of the principal causes for the constant flow of population to the large cities.

3. The present system of taxation discriminates against the poor and in favor of the rich.

4. It discriminates against the thrifty who acquire taxable property, in favor of people of larger incomes who pay no direct taxes.

The remedy may also be briefly summarized that the present system of taxation as it generally obtains is repression of prosperity for the following reasons:

a. A highly progressive inheritance tax.

b. A more equable plan for assessing real and personal property.

c. An income tax.

d. A fixed maximum rate.

e. Concerted action by all the states for the purpose of uniformity in the rate of taxation and the means of raising same.

There is and always have been many variant opinions and theories as to the best manner of raising taxes, although all persons who have considered the subject are agreed that taxes should only be raised for strictly public purposes, and then in a manner requiring the least personal sacrifice, and in such a way as to be least suppressive of industrial and business progress and success. The present method of raising the bulk of taxes for local governmental purposes, by assessing real estate and different forms of personal property including money, is subject to much criticism; while, on the other hand, it has the virtue of being one of the surest as well as one of the easiest ways of enforcing payment. This is especially true as to the taxation of real estate. This latter fact has caused this means of raising taxes to be very generally resorted to without reference to the injury thereby resulting to the industrial and social life of the people.

Inequalities in Assessing—City vs. Country.

Some of the defects in this system of raising the taxes are the inequalities in assessing and valuing real property, and even greater inequalities in the assessment of personal property, in that in many localities, especially the large cities, as a rule no decided effort is made to assess personal property. Indeed the policy is the reverse—to permit personal

property to go unassessed and hence untaxed. Then again in most localities, public service corporations, like common carriers and telegraph and telephone lines, are assessed on a different basis than other real and personal property, and are not assessed at all by local municipalities in which they may own property and have franchise rights, and from which they receive the same protection accorded property assessed for local purposes. Another defect in the present system of taxation is that while, as already stated, in the cities at least, personal property is not generally assessed, in the country districts and the smaller municipalities the reverse is true and here it is the exception rather than the rule for personal property to escape taxation.

And it is also true that in the country districts as a rule, especially in the villages and small cities, real estate is assessed for its full value and oftentimes more than its selling value, while in the city, owing in part to the policy of the assessing officers, and in part to the rapid increase in the value of real estate, it is very apt to be much underassessed.

Another defect in the present system of taxing property which has a bad effect upon the prosperity of the farming community is that it results in requiring the farmer to pay double taxes to a great extent. He is required to pay taxes upon the assessed value of his farm and personalty without any deduction for his indebtedness. His farm is assessed substantially its full value although he may be indebted on it for from one half to two thirds its assessed value, his personalty is likewise assessed although he may owe on it substantially the whole purchase price.

Baneful Effect of Inequalities.

The result of these defects in the present system of assessing property is that the farmer and the resident of the villages and small cities are generally assessed for substantially all their personal property at about its real cash value, and their real estate is also assessed at nearer the cash value than in the larger cities. As to real-estate assessments, however, it may be said that as a rule they average higher in the villages and small cities than do the assessments of farm real estate. The reason for this may generally be traced to the fact that most villages and small cities of late years have decreased in population and in industrial prosperity, causing a decrease in the value of real estate therein, without a corresponding reduction in the assessed value. The result is that the farmers and the residents of the smaller municipalities pay a much larger general tax accordingly than do the owners of property in the larger cities.

While this discrimination in favor of the owner of property, especially personal property, in the city, is generally conceded, it is, however, claimed that the matter is not of great importance, since it only affects the taxes raised for state purposes and that local municipal taxes are not affected thereby. This contention is, however fallacious, as it fails to take into consideration the fact that, since personal property is more generally assessed in small municipalities than in the large cities, the result is oppressive to industries in the small municipalities, which have to compete with similar industries in large cities which are favored in taxation. This works against the industries in the rural sections not only because they are required to pay a tax of in the neighborhood of 3 per cent on both their real estate and personal property at an assessed value of nearly, if not equal to, the actual value, while in the larger city industries will be taxed only a small portion of the actual cash value of their real estate and personal property; but such industries are also discouraged in the smaller municipalities by the fact that the assessment of other personal property, including money and choses in action, has the effect of inducing the residents of these places who are thus subjected to a large tax, frequently amounting to from one third to one half the income of their property, to take up their abode in the larger cities, where practically no attempt is made to tax them, on this class of property. In this manner much of the capital which otherwise would stay in the smaller municipalities is driven to the larger

cities; hence the owner of an industry located in a small municipality finds it hard, if not impossible, to borrow the money over and above his capital, necessary successfully to carry on the business in which he is engaged. To borrow this money, the owner of the industry finds it necessary also to remove to the large city.

The result is a constant loss, both of people and money, by the country, villages and smaller cities to the larger cities. The story of this constant flow of population toward the great cities is best stated in the census returns, and while perhaps this discrimination in taxation is not entirely to blame for this condition, it is largely at fault for it. Competition in most industries is so fierce as to make the amount of the assessment and the rate of taxes, as well as the ability easily to borrow money necessary to operate a large manufacturing business, decisive tests in determining the location of the business. Hence to these inequalities in the practical working of the present system of taxation may in a great measure be charged the lack of prosperity in the villages and smaller cities that now generally prevails. And to this system of taxation may be ascribed the failure of the farming districts to show any decided advance in population during the last decade, as well as the actual loss of population in many localities during this period.

Remedy.

Inasmuch as the movement from the rural districts to the large cities is very generally deplored, and serious efforts are being made to check same, the effect of our present system of taxation on this movement cannot be overestimated. It should lead to serious inquiry as to whether or not a more equitable means for raising the public revenues cannot be adopted,—one which will do away with the present system of requiring the owner of farm lands to pay taxes on the entire value of his land and personal property, regardless of his indebtedness thereon; and also a system that will be less repressive of manufacturing industries in the smaller cities and villages, that will not tax the small capitalist on his credits or money, thereby inducing him to remove to the larger city, where he enhances the opportunity to escape such taxation.

The Inheritance Tax.

Different remedies for these generally acknowledged defects in the present tax system have been proposed, and one of them to a limited extent is now in force in many jurisdictions; this is the taxation of the right of succession, commonly called the inheritance tax. This tax is subject to the criticism that it is a double tax, and also that the amount each year to be derived from that source of revenue is uncertain. These objections or criticisms are, however, of small weight as compared with the advantages of the system, and especially the good to be derived from the system if developed along the line of a tax highly progressive in accordance with the size of the estate by thereby causing a frequent distribution of wealth and a dissolution to a great extent of large estates. In this way such a proportion of the needed revenues may be raised as will give immediate and substantial relief from the present system, to those most in need of it. And, as stated, this form of taxation also has the virtue of providing a means for the compulsory distribution of large estates. For these purposes it has been used in France with very gratifying results, where the maximum rate on distant collateral inheritance of succession to the largest estates is now 34 per cent, a rate which might be regarded as confiscatory were it not for the fact that neither in this country, nor in few if any other civilized countries, is the right of inheritance deemed to be a vested property right. Since without laws of descent and distribution, property upon the death of the owner would escheat to the state or the sovereign power, hence in conferring the right of inheritance upon any individual or class of individuals, the state may place such burdens and limitations thereon as the public welfare may require. The taxation in this country, of estates of decedents, if based on the theory of the French tax, would go far toward providing all the necessary rev-

enues needed for public purposes if the government were economically administered.

Direct Tax on Real and Personal Property.

In addition to the foregoing method of raising revenue, the present method of taxing real estate and personal property may be rendered more equitable and less repressive of farming, and industrial business in villages and the smaller cities, by raising all the taxes through action of the state, rather than the different municipal bodies. All property, both real and personal, should be assessed by state assessors, and the actual cash value of the property should be determined by the condition and situation of the property and its selling value, estimated with due regard to the actual or probable income therefrom. The gross income to be considered unless the owner, under oath, shows that he is entitled to deductions therefrom for money expended in operating expenses or ordinary repairs, etc. This means of assessing property should be applied both to real and personal property, and should include common carriers, telephone and telegraph lines and other public-service corporations, and the value of their franchise. The owner of property taxed should be entitled to have deducted from the cash value his bona fide indebtedness thereon. This deduction, however, should depend upon the interest rate. If the interest rate is a low rate, say 4 or 5 per cent, the owner of the property should be required to pay taxes on the full cash value. If a higher rate of interest is exacted he should only be required to pay on his actual interest in the property; the balance of interest in the property should be assessed to the creditor at the same place as the local assessment, without reference to the actual residence of the latter. And payment thereof should be enforced by laws forbidding the right to proceed in the courts to enforce any debt or lien on which the taxes have not been paid.

The taxes paid by public-service corporations should be so assessed as to cover their just proportion of the state taxes and the taxes of the smaller governmental agencies, such as counties, towns, cities and villages which may be traversed by such public-service corporation. Since they receive the benefit of fire, police protection, and other benefits from these municipalities, it is but right that they should contribute to the expense. The taxes paid by these different corporations should be distributed among the different municipalities traversed by them, and should be based upon a rate per cent which the mileage, value of improvements, etc., in each municipality bears to the assessed value of the entire property, which of course would include the value of the franchise.

The Income Tax.

Aside from the inheritance tax and comprising practically the other modes of taxation already proposed, is the income tax in a modified and more practicable form than the ordinary income tax. Because under the proposed system of taxing either the specific property or the income therefrom, unproductive real and personal property are taxed as also are productive real and personal property, but in the latter case the tax is a single tax in that the owner, if he is assessed upon his income including the income from such property, is entitled to have the direct tax deducted from the amount of his income tax, and this tax is on the gross income less operating expenses proven under oath. The result is a tax in so far as practicable on the net income only, but on a basis which will prevent fraud in escaping taxation, and insure the taxation of all property either by taxing the income or the property itself.

The income tax as a means for raising the revenue may also be commended in that it is the least oppressive of any, unless it is the inheritance tax. There are to-day thousands of our people who enjoy large incomes, who send their children to the public schools without expense, and who otherwise receive all the benefits of taxpaying citizens, but who share in none of the burdens of government and hence feel little of the responsibilities of citizenship. The wise and economical use of the funds raised by taxation is of little interest to this class of people as a general rule, and to this may be laid the fact that extravagance and waste in the management of public

affairs may be continued with but little danger of rebuke at the polls.

It is frequently claimed that inasmuch as these people are consumers they indirectly pay a tax. This is to a great extent a fallacious theory however, since the price to the consumer as to most articles, including rent, is influenced too largely by extrinsic facts, such as competition, supply and demand, etc., to make it possible for the taxpayer to compute and add to the selling price or rental, the amount of taxes paid. Moreover this form of taxation, on the consumer if it be regarded as a tax, falls equally upon all consumers the direct as well as the indirect taxpayer.

In order, therefore, that the burdens of government fall more equally upon all citizens, the income of all persons, natural and artificial, above a minimum amount, say $500, should be taxed for state and municipal purposes according to the residence of the individual; but as already stated the direct taxpayer should be entitled to have deducted from his income tax the amount of his direct taxes on the property from which any part of the income is derived.

Concerted State Action.

In order that any system of taxation be entirely successful, concert of action by the different states in the manner of raising same and the rate per cent is imperative. In this manner all competing industries in the different states in the matter of taxation are placed on a substantially equal basis, and no state will become an asylum for tax dodgers.

Maximum Rate.

Not only should taxes of all governmental agencies be raised through concerted state action, but in the same manner a maximum rate should be fixed by the different states, covering taxes of every character, except local improvements, which may be lawfully assessed in any one year. This maximum rate should be high enough to meet the absolute necessities, but at the same time low enough to make it necessary to practise strict economy in state and municipal government. In order, however, to take care of special cases where a greater amount than this maximum rate is both desired and desirable, any municipality should have the power, by a direct vote of the people, to increase this maximum rate; this vote to be based upon a budget to be prepared by the proper municipal officers, which of course should be submitted to the voter prior to his vote,

Conclusion.

While there are many evils to be overcome in our governmental affairs, this question of taxation is one of the most important ones. The suggestions herewith submitted as a means to overcome this particular evil are more in the nature of an outline than an attempt to take up in detail the different methods of raising the revenue suggested, which of course would be impracticable in an article of this character.

A. G. Shepard

The Taxation of Land Values

BY LOUIS F. POST

[Ed. Note.—Mr. Post is a well-known writer and lecturer on the single tax and allied economic reforms. He is editor of "The Public." He has published in recent years "Ethics of Democracy," "Ethical Principles of Marriage and Divorce," "Social Service" and "Land Value Taxation." The views here presented are those expressed by him in the last-mentioned work. Copyrighted 1912.]

ONE of the methods of raising public revenues is by land value taxation.

Land value taxation is any tax levied on landowners in proportion to the value of their land, irrespective of its improvements.

In most countries land value taxes are familiar enough in connection with other taxes. This is so in the United States, where real estate taxes are (a) in part taxes according to the value of improvements, and (b) in part taxes according to the value of land.

Land value taxation may thus supply (a) a greater or less proportion of the public revenues, the rest being obtained from taxes on improvements, personal property, incomes, business licenses, and so on; or (b) it may be exclusive, public revenues being raised from no other source.

When land value taxation is exclusive, it is appropriately enough called "the single tax," meaning only one tax and that upon land values.

The single tax (exclusive land value taxation) may vary in degree, from (a) a rate that will supply revenues sufficient only for the bare needs of government, to (b) a rate high enough to appropriate to public use approximately the entire annual value of land.

The annual needs of a government might coincide approximately with the annual value of the land within its jurisdiction, in which case there would be no practical difference between a land value tax sufficient merely for public needs, and one high enough to appropriate approximately all annual land values. Theoretically, however, the difference is to be observed; for there is a difference in theory and there might be in practice.

We may make the following enumeration of different kinds or degrees of land value taxation:

1. Land value taxation, together with taxation on improvements and personal property. This is commonly known as the "general property tax."

2. Land value taxation, together with taxation on improvements, personal property being disregarded or exempt. This is commonly known as the real estate tax.

3. Land value taxation, to the exclusion of all other revenue taxes, but limited to the needs of government. This may be distinguished as the "single tax limited."

4. Land value taxation, whether exclusively such or not, which begins with a low rate or none on land of moderate value, and increases progressively in rate on land of higher values, with a view to encouraging small holdings and discouraging large ones, is known as the "progressive land value tax."

5. Land value taxation, to the exclusion of all other revenue taxes, and to the full rental value approximately of the land. This might be called simply the "single tax."

The Exclusive Land Value Method.

Land value taxation to the exclusion of all other revenue taxes, but limited to the needs of government, was proposed by Henry George in "Progress and Poverty" in 1879, as the best known fiscal method, and one that would moreover, by force of its own excellence for revenue purposes, develop into the simplest means of securing to the community as

a whole the value of land, and to each individual the value of his work, thereby at once supplying abundant public revenues and settling the labor question on the basis of justice. Henry George expressed the idea in these words: "Abolish all taxation save that upon land values."

This proposal, long known as "the single tax" is coming to be better and more favorably known as "land value taxation." Under its operation all classes of workers, whether manufacturers, merchants, bankers, professional men, clerks, mechanics, farmers, farm hands, or other working classes, would, as such, be wholly exempt from taxation.

It is only as men own land that they would be taxed, the tax of each being in proportion, not to the area, but to the value of his land.

And no one would be compelled to pay a higher tax than others if his land were improved or used while theirs was not, nor if his were better improved or better used than theirs. The value of its improvements would not be considered in estimating the value of a holding; site value alone would govern. If a site rose in the market, the tax would proportionately increase; if it fell, the tax would proportionately diminish.

Land value taxation, therefore, when carried to the point of the single tax (whether limited or not) may be concisely defined as a tax upon land alone, in the ratio of value and irrespective of its improvements or its use.

Land Value Taxes Are in Proportion to Benefits.

To perceive that land value taxation would justly measure the value of public benefits which every individual respectively enjoys, we have only to consider that the mass of individuals everywhere and now, in paying for the land they use, actually pay for public benefits in proportion to what they receive.

He who would enjoy those benefits must use land where the benfits can be enjoyed. He cannot, for instance, carry land from where government is poor to where it is good; neither can he carry it from where the benefits of good government are few or enjoyed with difficulty to where they are many and fully enjoyed. He must rent or buy land where the benefits of government are available, or forego them. And unless he buys or rents where they are greatest or most available, he must forego them in degree. Consequently, if he would work or live where the benefits of government are available, and does not already own land there, he will be compelled to rent or buy at a valuation which, other things being equal, will depend upon the value of the government service that the site he selects enables him to enjoy. Thus does he pay for the service of government in proportion to its value to him. But he does not pay the public, which provides the service; he is required to pay landowners.

The economic principle pursuant to which landowners are thus able to charge their fellow citizens for the common benefits of their common government points to the true method of taxation. With the exception of such other monopoly property as is analogous to land titles, and which in the purview of the single tax is included with land for purposes of taxation, land is the only kind of property that is increased in value by government; and the increase tends to be in proportion to the public service which its possession secures to the occupant.

Therefore, by taxing land in proportion to its value, and exempting all other property, kindred monopolies excepted—that is to say, by adopting exclusive land value taxation—we should be levying taxes according to benefits.

Nor would this be in any sense class taxation. Indeed, the cry of class taxation is rather impudent for owners of valuable land to raise against land value taxes, when it is considered that under existing systems of taxation such landowners are exempt.

Even the poorest and most degraded classes in the community, besides paying landowners for such public benefits as come their way, are compelled by indirect taxation to contribute to the support of government.

But landowners as a class go free. They enjoy the protection of the courts, and of the police and fire departments, and they have the use of schools and the

benefit of highways and other public improvements, all in common with the most favored, and upon the same specific terms; yet, though they go through the form of paying taxes, and if their holdings are of considerable value pose as "the taxpayers" on all important occasions, they, in effect, and considered as a class, pay no taxes. To tax them alone, therefore, is not to discriminate against them; it is to charge them for what they get from the public.

Conformity to General Principles of Taxation.

Land value taxation conforms most closely to the essential principles of Adam Smith's four classical maxims, which are stated by Henry George as follows:

"The best tax by which public revenues can be raised is evidently that which will closest conform to the following conditions: (1) That it bear as lightly as possible upon production—so as least to check the increase of the general fund from which taxes must be paid and the community maintained. (2) That it be easily and cheaply collected, and fall as directly as may be upon the ultimate payers—so as to take from the people as little as possible in addition to what it yields to the government. (3) That it be certain—so as to give the least opportunity for tyranny or corruption on the part of officials, and the least temptation to lawbreaking and evasion on the part of the taxpayers. (4) That it bear equally—so as to give no citizen an advantage or put any at a disadvantage as compared with others."

Interference With Production.

Indirect taxes tend to check production and to cause scarcity by obstructing the processes of production. They fall upon men as they work, as they do business, as they invest capital productively. But land value taxes which must be paid and be the same in amount regardless of whether the taxpayer works or plays, or whether he invests his capital productively or wastes it, or whether he uses his land for the most productive purposes or in lesser degree or not at all, lay no penalties upon industry and thrift. Therefore they conform to the first maxim quoted above.

Cheapness of Collection.

Indirect taxes are passed along from first payers to final consumers through many exchanges, accumulating compound profits as they go, until they take enormous sums from the people in addition to what the government receives. But land value taxes take nothing from the people in excess of the tax. Therefore they conform to the second maximum quoted above.

Certainty.

No other tax, direct or indirect, conforms so closely to the third maxim, "Land lies out of doors." It cannot be hidden; it cannot be "accidentally" overlooked. Nor can its value be greatly misapprehended or misstated. Neither under-appraisement nor over-appraisement is possible to any important extent without the connivance of the whole community. The land values of a neighborhood are matters of common knowledge. Any intelligent resident can justly appraise them, and every other intelligent resident can fairly test the appraisement. Therefore the tyranny, corruption, fraud, favoritism, and evasions which are so common in connection with the taxation of imports, manufactures, incomes, personal property, and buildings—the values of which, even when the object itself cannot be hidden, are so distinctly matters of minute special knowledge that only experts can fairly appraise them—would be out of the question if land value taxation were substituted for existing fiscal methods.

Equality.

In conforming to the fourth maxim, the land value tax bears more equally —that is to say, more justly—than any other tax. It is the only tax that falls upon the taxpayer in proportion to the pecuniary benefits he receives from the public, and its tendency, accelerating with increase of the tax, is to leave to everyone the full fruit of his own productive enterprise and effort.

The Single Tax as a Fiscal Policy

BY L. B. SCHWARTZ

Of the St. Paul Bar

"OUR present taxing system," the late Judge Jaggard of the Supreme Court of Minnesota, once exclaimed, "is the most asinine imaginable." A strong statement that! And yet any student of taxation will tell you that it might be applied not only to the system in Minnesota to which the judge was referring, but to the fiscal policy of every state in the Union.

Benjamin Harrison, President of the United States as well as eminent constitutional lawyer, jokingly suggested as the only reform possible, an invitation to the rich men of the country to come forward and generously hand over all their property to the government. Every remedy seems to have been suggested from that of President Harrison to that recently made by a self styled "economist," who urged that all property should be taxed, as the true principle, and to carry it out, that any property wilfully omitted from the taxpayers' sworn statement should be unceremoniously confiscated by the state.

Wonderful, is it not? Pick out almost any of us, and ask him how he would manage it, if it were his own private business, and I would wager dollars to doughnuts, that he could in a jiffy have a system answering every canon of taxation and every dictate of justice. And yet there we stand, 90,000,000 of the most progressive people on earth (by our own admission), and what does Shakspere say—"in apprehension so like gods?"—and heirs to all the wisdom of the gods that went before us, able to avail ourselves of their mistakes and experiences from hoary old Egypt's time up to our very own, tinkering with the problem in over forty independent experimental stations, and yet, unable to evolve a better system of raising our public revenues than one characterized and generally admitted to be asinine.

Now what are the canons of taxation? The economists tell us—but let us not rely on what others tell us. What, shall another tell us how to run our own business? We, all the people, want to do the right thing, don't we? So let us ourselves evolve a system which will do the right thing by all of us. What requisites, then, must a system of taxation have in order that it may deal justly with all of us and with each of us.

Well, first, it must be a just tax. But what is a just tax?

Qualification 1. A just tax must not have the effect of taking property from one of us and transferring it to another's pockets; and conversely, it must not take something belonging to all of us and transfer it to one of us, nor take from one of us more than his share.

Qualification 2. A just tax should be certain, so that it shall not offer any incentive to graft and corruption, to injustice, and so that each one of us should be able to see that it works justly.

Qualification 3. A just tax should take from the citizen in proportion to the benefits he receives, value for value given, and no more.

Qualification 4. A just tax should not be oppressive, nor kill nor drive away the goose that lays the golden eggs.

Qualification 5. A just tax should be easily ascertainable and collectible, or inexpensive, as the expense also falls on the citizens.

Qualification 6. A just tax should stay put,—one that cannot be shifted; for if the one paying it can shift it by adding the tax to the price of the article taxed, it will finally occur that some will be enabled to shift the whole burden to the shoulders of others.

Here I pause, when some "economist" cries out, "Oh, but you have left out the most important canon; to wit, that in order to be just, the tax should fall as equally as possible on all the members of the community, and that this merely means that each ought to pay according to his ability."

That sounds well, but let us see. Just imagine an office building, one of your 45-story modern sky scrapers, owned by its tenants in common. Now you have each tenant occupying a certain space. Its heating, gas, and water plants are its public utilities. Its elevator service is its traction system. It has its police and health department in its janitors. It perhaps has its private fire department, and possibly its own private hospital in its sick and resting rooms. A complete little government or city in itself. Now suppose you go to those tenants and ask them to raise the revenues for the support of that building by a tax, what would they call assessing each other equally? Say it costs $20,000 per annum to run that building, would they divide the expense among its two hundred tenants, assessing each $100? Or can you imagine them assessing each other according to their ability to pay, or the amount of business they did? Not if they were sane. What then? Manifestly they would assess each tenant according to the value of the space he occupied in that building. That, each would instinctively recognize as the just tax, as the one that treated all with equal favor,—equally, equitably, and justly. That tax or assessment would be easily ascertainable and collectible, would stay put, and could not be shifted from one tenant to another. It would take from each a value that belonged to all, and from no one, a value belonging to him alone. It would entail no corruption; for each would know how much space he occupies and the value of that space. It would be inexpensive, as one official could assess and collect all of it. It would not be oppressive, for you could not collect more than the value of the space each occupied; and if a tenant paid less than that value, other tenants would object to his taking part of a value that belonged to all for his own private pocket. If the amount collected was more than was needed, the surplus would be put in the public treasury for the benefit of all the tenants; and if they desired, they might with it add a library or any other improvement in the building that would add to their common use or enjoyment; or they might, if they desired, grant a pension out of the surplus to such tenants as were disabled in that building.

Suppose the tenants should, however, adopt your system of making each pay according to his financial ability. What would happen? Why the same thing that is happening wherever it is tried. How would you guage the tenant's ability to pay? Well, as we do now, by his sworn returns, of all his property, money in bank, etc. Second, by the kind of clothes and furniture he had. Third, by a system of spies prying into the private affairs of each tenant. Fourth, perhaps, by making each tenant pay a tax on everything he bought outside of the building. (This would, of course, serve the double purpose of raising revenue, and "protecting" the tenants.) Fifth, by an income and inheritance tax; and lastly, by assessing each tenant, in front of whose door you had repaired the hallway, so that tenants walking in and out of his office should not break their necks.

The result would be as follows: Most of the tenants would become perjurers, and swear they were paupers. The system of spies, euphemistically termed deputy assessors, would be rather expensive. The temptation to use bribery and show favoritism would prevail, as each tenant would try to get as low an assessment as possible. The more cunning and able who could control the election of assessor would pay less, and the weaker and honest, more. Soon you would have a "Boss," who would by promises and favors control the election. The tenants, who like the farmers, must keep their property in full view, would get the worst end of the bargain, while the bankers and brokers who could conceal their assets, the best end of it. The tenants selling goods would add their assessment to their expense, and so shift the tax to the purchasing tenants, and so no one could tell who was actually paying the assessment. Some of the tenants would

soon engage in smuggling in goods to evade the "protective" tax. Incomes and inheritances would be concealed as much as possible, the honest and the guileless alone paying their share. You would have a premium on crookedness and a fine on honesty. The tenants would be discouraged from buying good clothes and furniture, besides their purchasing power being diminished by the tax; and they would fight like steers, to keep the defective walk in front of their door from being repaired. Some of the more farsighted tenants would pre-empt as much space as they could get, and sublet to others as they came in, holding some of the space for a rise in value. Soon some of the tenants would discover that they did not need to work, that it paid better to sit back and let the other tenants work, and just pay them rent. This rent would of course go up with every increase in the prosperity of the working tenants, so that no matter what the working tenants produced, the increased rent would absorb it all. With every new tenant increasing the value of space in the building, and the space lords getting more rent than they could use, they would then loan it back to the other tenants as capital, and in the form of interest still further deplete the wealth of the working tenants. And why any sensible tenants should go to all that expense, trouble, and complication, when by assessing each according to the space each occupied it could all be avoided, is beyond the comprehension of a sane mind.

Yet is not that exactly what we, all of us, tenants in common of mother earth, —of city, county, state, and nation,—are doing? Here are a thousand and one proposals, a very babble of tongues,—tariff for revenue and tariff for protection, income, inheritance taxes, direct and indirect tax,—and there is the one plain thing to do, so evident to the single taxer, and yet all others seemingly unable to grasp the thought. For the single tax is nothing more nor less than this,—abolish all other taxes, tariffs, and assessments. Instead assess yourselves according to the value of the space you occupy.

Here some one objects, "Would you put all taxes on that little farm, or that little home, and exempt the stocks and bonds of the rich and the stock of the department store?" My answer can only be, that if that were the effect of the single tax, all the "interests" in the country would be clamoring for it, instead of fighting it tooth and nail, as they are doing in Oregon, Washington, Missouri, and Ohio. In the last state, at its recent constitutional convention, the large business interests there represented had a prohibition put in the new Constitution against the initiative and referendum, then adopted, ever being used to bring in the single tax. Now the initiative and referendum are always desired by the common people. The rich do not need it. They can usually get what they want more easily by lobbying through the legislature. And yet these rich interests put in a constitutional inhibition against the "mob" ever using the initiative to lift the burden of taxation from stocks and bonds and putting it on the small farm and home. Queer, is it not?

No, Mr. Objector, the only thing about the farm that would be taxed under the single tax, would be the site value of the land. His improvements, cultivation value, stock, buildings, and machinery would all be exempt, and so he would pay less than he does now. One lot in a city 40 by 100 feet, that is valued at $10,000 would pay more taxes than three farms of 160 acres each. And that lot in New York that recently sold for $800,000 would pay as much taxes as a whole county of farmers.

Under the single tax, most of the value of that lot in yearly instalments would go into the public treasury to meet the expenses of government, and so would take off the taxes now resting on the small home and farm. Now its value goes into private pockets, and is paid by the farmer and small home owner, when they buy the goods manufactured or sold on that lot. Having paid this, Mr. Farmer and Mr. "Small-home-owner" are taxed again on their piano, sewing machines, sugar, and what not, by a complicated system of taxes, tariffs, and licenses, all designed to "protect" him, yet

it is estimated, strange to say, by taking away from $15 to $20 a month of his small earnings.

A lot on which a small home stands is probably worth $1,000. It is on that valuation that the single tax would be levied, the building, usually worth twice that sum, being exempt. Here Mr. Objector again demurs, "Here is a man that owns a lot on which stands a skyscraper worth $100,000, and next to it is a lot of the same size on which stands a "humble home." Would you tax them both the same?" My answer is, that humble homes are not erected next to skyscrapers, as the land next to such a building is usually worth say $10,000, and humble home owners are usually not fortunate enough to possess anything more valuable than a thousand dollar lot under their homes. But why should the owner of that skyscraper be fined for building it? By doing so he has benefited the community. We want more buildings. More buildings mean more work and cheaper rent. The man who owns that vacant lot next door is conferring no benefit on the community. He is merely lying in wait, his land absorbing the benefit of every improvement in the community, of every person coming to or born in that community; and at the right moment he will get up, title deed in hand, and hold up the user of that land for a certain amount, which amount the community must pay in the last analysis, in the added price of the things sold or produced on that land. Thus, the members of the community will pay him a value that they have themselves produced. If anyone ought to be taxed more, it is the man who holds land idle, and not the one who puts it to use. But who pays that increased tax on the skyscraper? Not the owner, but the tenant. And who pays the tenant? The man who does business with him. So that it gets down again to Mr. Commonman. It is absolutely beyond the ingenuity of man to devise any tax on personal property that will not be shifted.

Can a tax on land be shifted? No. A tax on land, exclusive of improvements, puts a penalty on holding land out of use, and a premium on using, improving, it. It therefore forces more land into use. The owners of land being obliged to either use it or sell, its price falls. And so, instead of the tax being added to its price, the tax cheapens its price.

"But why," says Mr. Landowner, "should land alone be singled out of all property for taxation?" Well, Mr. Landlord, for one reason, because our canons of taxation point your way. If those canons are correct, there is but one conclusion possible. If they are not, it is for you to point out the error. For another reason, because the value of land is peculiarly the result, not of your labor, but the result of the working of the community. It is a community-produced value. Anything else that you own is the product of your own labor or some other person's labor. Did you make that land? You might have been in China without affecting its value. You might have never done a stroke of work, and still the value of that land would go up with every increase of population, and every improvement, public or private, in the community. There it is, as it was since the six days of creation. Fifty years ago, it was worth $10. Twenty years ago its value had increased to $200. Ten years ago its value had risen to $1,000, and to-day it is worth $10,000. Yet it is vacant now and always was so. That is the constant phenomenon of land values. Buildings—everything else deteriorates, decays, disappears, becomes cheaper as time goes on. "There is only one crop of land," and that is ever growing dearer, absorbing the surplus value produced in the community. There in New York it increased $200,000,000 a year from 1896 to 1900. Who made that increase? The labor of its owners? No. Every man, woman, and child coming to the city, every new street laid, library, building, or home put up has made that value. Now if the value was produced by the community, why is not the community entitled to it? What I produce is mine. What you produce is yours. What we all produce is ours. And just as it would be robbery for me to appropriate what you produced, so is it equally robbery for any one of us to privately appropriate what we produce.

Notice further. Just as in that office building, we saw that as the tenants in-

creased, and the building's needs increased, its space value became dearer, and so the revenues increased; so in the community the same phenomenon appears. In your small village, its needs and expenses are small. So are its land values. As that village grows to the size of the metropolitan city, its land values rise in direct proportion to its needs. And when its expenses require millions, one little lot is worth a hundred thousand dollars or more. Now morally, the owner of that lot is not entitled to its value. Its value was produced by the community, and it is therefore robbery for him to appropriate it. The single taxer points out that there is the natural source of the government's revenues. There is the fund which belongs to the community, and to which it alone is entitled. And it is not entitled to one cent of money or property which I individually produced by my labor.

The owner of the land, you object, may have bought it, and gave the product of his labor for it. Suppose, however, he had bought a slave. By law, I admit, he might be entitled to the product of that slave's toil. But morally, though he had paid a lifetime's honest earnings for the slave, he would not be entitled to anything that slave produced. You cannot make something rightful property by purchase which is not so in fact. The title, defective at its source, remains defective, no matter how many times transferred.

Consider what is meant by the assertion of ownership to land. The assertion of ownership to this pen or suit of clothes implies the extension of that right to morally own any number of pens or suits, even to the extent of owning all the clothing now in existence. If I acquired all that clothing rightfully, that is, by giving the products of my labor in exchange therefor, no one could object to what use I put that clothing, so long as I did not create a nuisance. That is true from the nature of things. The amount of clothing that can be made is unlimited; and if I choose to refuse the use of my clothing, either by purchase or exchange, that is my business; and mankind must get busy and make other clothing, and until then, if necessary, use fig leafs to cover its nakedness. Presumably, when I acquired that clothing, I had given equal value therefor,—my labor or its product, for your labor or its product. But suppose I should purchase all the earth, its surface, space, or sites. I might have given the product of my labor, but would I be getting in return the product of anybody's labor? No. All the sellers could give me or would be giving me would be the right (?) not to let anybody work on that land, until they either gave me or agreed to give me part of their labor. Just think what is implied, when I sell land to you and your heirs forever. I give you a perpetual mortgage on all the labor that shall ever be employed on that land from now until all eternity. Generations will have come and gone, I will have been long dead and forgotten, and yet your descendants and their assigns will be collecting a toll from everything produced on that land,—perhaps a half or a third or two thirds interest,—because you a thousand generations back gave me $10 worth of potatoes, and I gave you a piece of paper describing that land.

Now when I owned that clothing I could morally exclude all people from the use of that clothing. Could I, by owning all the earth, morally exclude all people from living on my earth? "Ah," you say, you are merely pushing a qualified right to an extreme." My reply is, that for the same reason that you qualify the right, you must also deny it. For why do you qualify the right? "Because," you answer, "to give me the right to own all the surface of the earth were to give me the power of life and death over my fellow beings; and that right you cannot admit in anyone, because it is inconsistent with the equal right of all persons to be on this earth." But, say I, the other persons could work for me and so by their labor purchase part of the earth's surface from me. You then object that the right to sell implies the right to refuse to sell; and if I refused, I could make all people either quit the earth, or give me almost all their produce as rent. The right, you say, must then be restricted so that each person can own a limited portion of the earth's surface. Well then, say I, let us divide the earth's sur-

face among all its inhabitants; surely that is reasonable. Now to-morrow a baby is born. He, in course of time, becomes a man. Say his father has sold or squandered his estate, or willed it away to another child. He also has a right to live on this earth, has he not? Must he quit the planet, unless he finds someone willing to sell him a portion of the earth's surface? If so, then his life is dependent on somebody's willingness to sell or not to sell. That is, they have the power of life and death over him. And I thought you said that all persons had an equal right to live. So that it seems that your qualified right when examined becomes no right at all.

The single tax obviates the difficulty by taking the value of every piece of land, the rental value, for the benefit of all the people. Such land as had no value would of course pay no tax, being free to any user.

Government, society, is a benefit that all of us confer on each of us. The price of a benefit should not be graduated according to the ability of the person to pay, no more than when you sell clothing or office space, do you charge a rich man more than a poor man. Get any tax that does not satisfy our canons or qualifications, and it won't work, that is all. Tax incomes and inheritances, and only the honest will pay it. It violates qualification 2, and so breeds corruption and perjury. It is beyond the ingenuity of man to devise an unjust tax that will work out justly. Tax goods, and you kill the goose that lays the golden egg. Your tax is added to the value, and so decreases the purchasing power of the masses. When you tax dogs you want less dogs. Do you want less goods or buildings? Besides the purchaser pays it, and so it does not stay put. Stocks and bonds are in the nature of mortgages, and no tax has yet been devised which the mortgagee could not shift to the mortgagor.

The tax on land values satisfies all the canons of taxation. It cannot decrease land, but will decrease its price. It can't be shifted, because it cheapens land. It is easy of assessment. All of it is in view, and its value easily ascertainable. It takes from no one what he produced, and assesses each according to the value of the space he occupies. It is inexpensive to collect, and needs no espionage system. It is just, and free from incentive to graft and corruption. It stimulates the use of land. More land used means more demand for labor, and that means higher wages. More labor employed means more commodities produced, and that means cheaper commodities. High wages and cheap commodities spell, among other things, the solution to the high cost of living. But that is without the domain of my article. I was merely to discuss the single tax as a fiscal system, not as a social and economic philosophy.

L. B. Schwartz.

"Here are two men of equal incomes—that of the one derived from the exertion of his labor, that of the other from rent of land. Is it just that they should equally contribute to the expenses of the state? Evidently not. The income of the one represents wealth he creates and adds to the general wealth of the state; the income of the other represents merely wealth that he takes from the general stock, returning nothing.."—*Progress and Poverty, book VIII, ch. III, subd. 4.*

Equal Suffrage

BY EVERETT P. WHEELER

Member of the New York Bar

THE articles on this subject, in the October number of CASE AND COMMENT, seem to me to overlook the fundamental objections to further extending the suffrage to women. The proposition is that our Constitution and laws should be so changed as to give to all women who are citizens of the United States and above the age of twenty-one years, the right to vote in Federal and state elections.

Wives of Naturalized Citizens.

Under the laws of the United States when a foreigner becomes a citizen, his wife thereby becomes a citizen. He is required to submit to a careful preliminary examination as to his knowledge of our Constitution and his loyalty to the principles of the Republic. His wife undergoes no examination, is subjected to no scrutiny; the mere fact that she is his wife makes her a citizen. The proposition is to add to our authorized and possible voters in the United States about 20,000,000 persons, many of whom have no acquaintance with our laws or our Constitutions and do not even speak our language. The man learns something of this in his daily work; the wife does not. The ordinary means for influencing voters through the press would be unavailing in this case. Is it possible that it would be for the welfare of the country to add this great number of such voters to the constituencies in the different states?

Mr. Taylor does not meet this proposition, perhaps, because of the fact that there are very few women in Colorado to whom it applies, but, in point of fact, there are in the United States 5,821,138 females of foreign birth. Most of these live in New England, New York, and the Middle States. Very many of them came to this country long after their husbands, and none of them have passed any examination as to their qualifications for citizenship.

But Mr. Taylor says the 7,000,000 wage-earning women and girls in this country are 7,000,000 reasons for the enfranchisement of women. The answer to this is that about half of these wage-earning women and girls are not of voting age, and much more than half of them are wage-earners for a comparatively brief period. On the other hand, there are 20,000,000 women in this country who either are, or in the ordinary course, will be wives and mothers, and they constitute 20,000,000 reasons against putting upon them the burden of franchise. The whole future of the race in this country depends upon these. The great majority of these mothers keep no servants. Besides the burden of motherhood, they have the care of their household, the provision of food for the husband and children, the countless requirements that each day the household brings with it. Some of them are in cities and towns, more of them in farmhouses throughout the country. Wherever they are they carry a burden that no man who is half a man can fail to regard with consideration and respect. Let me quote from that remarkable book of a remarkable woman, Jane Addams, "Twenty Years at Hull House:"

"With all of the efforts made by modern society to nurture and educate the young, how stupid it is to permit the mothers of these children to spend themselves in the coarser work of the world. It is curiously inconsistent that, with the emphasis which this generation has placed upon the prolongation of infancy, we constantly allow the waste of this most precious material."

Yet what the suffragists propose is to impose upon these mothers the burden of the vote, to subject them to the entreaties of political committees, to be called out to meetings during the campaign, and to leave everything else in order to cast a vote on election day. And therefore to the well-meaning people who advocate the extensions of franchise, I would say: "You do not realize what is meant by a political campaign." It is warfare. It is a heated warfare. It is an exciting warfare; and when men get into the heat of it they often forget every consideration except success. Do you seriously mean to say that you want the mothers of the race, the nursing mothers, the mothers who are toiling to keep up the family and to bring up their children, subjected to this political strife and compelled to take part in it? Do you know that of all things for the mother the most important is tranquillity? It is elementary that the mother "should lead a quiet and temperate life, free from overfatigue or stimulation." This cannot always be attained, I know, but why should we diminish what there is? Why should we increase what Jane Addams calls "the waste of this most precious material?" If a political canvasser were to break into a household and seek to enlist the activity of the mother, she would despise him, and the husband would turn him out of doors, and rightly too, for it would be a brutal thing. And yet, good ladies, this is exactly what you are trying to do by legislation.

Let me quote an admirable statement from W. H. Allen's book on Woman's Part in Government (pp. 37–39):

"What seems so easy now when she has not the ballot will become confusing. Candidates will all talk alike. Moral issues will be as thick as bacteria in bad milk.

"It will be most annoying to have calls at all hours of the day, to receive letters in every mail, to be buttonholed on the street, in church, or at club meetings, and to be forced again to go through the turmoil that characterized the campaign for the ballot.

"It will be futile to protest indifference, and impossible to know that a very nicely addressed envelop contains an appeal to vote for John or Mary Doe.

"If you do not go into the convention (so long as it lasts) you have little or no influence. If you go in, you must go to participate, which means, as in women's clubs for example, to scheme, to maneuver, and to fight. Once in the convention the chaos, disorder, and uncertainty will make it almost impossible to reach an unbiased decision unless you have already decided which leader to follow.

"Efficient use of woman's first ballot means organization in advance and continuous educational work with each eligible voter. It means, moreover, visits for the purpose of persuading women to register, registering, counting, interpreting the vote, and learning lessons from it. To take each of these steps will be more important at woman's first ballot than to vote right on the men and issues presented."

It has been justly said that "women and men are respectively the capital and income of the state." It would waste our capital improvidently to burden motherhood with the exacting task of politics. It cannot be right to put these additional and grievous burdens on the mothers of the coming generations.

Woman Teachers.

Again let us consider the case of woman teachers. There are about 400,000 of these in the United States. There are 17,000,000 children enrolled in the public schools. To teach them well requires the whole energy and vitality of the teacher, and is of vital importance to the future of America. Can anyone seriously maintain that it would be well to enlist these noble women in the excitement of political campaigns? This would be folly and mischievous madness.

Right to Vote.

The argument that appeals to many advocates of woman's suffrage is that every person has a right to vote, and that it is therefore unjust to deprive a woman of this right. But where do we find support for the assertion that every person has a right to vote? There is no country in the world where this statement is conceded. Perhaps the suffrage

in this country is more widely extended than in any other, but even with us it is greatly limited. In the first place, nowhere in America are persons allowed to vote who have not attained the age of twenty-one years, however intelligent they may be. Then, in almost every state, no person is allowed to vote who is not registered. If a man is absent on business from his home on the days appointed for registration he loses his vote. He may be the owner of property; he may have lived in his district twenty years; but the requirement is inexorable that he must be registered on a particular day or lose his vote. If there is any such thing as a right to vote, how can you justify the exclusion from the franchise of a nonregistered voter?

In some states there are educational tests. An illiterate person may have property and intelligence. But the franchise is denied him. Again, in the District of Columbia no one votes. Will our suffragist friends assert that the people of the District are deprived of their rights and are living under a despotic government? Yet that is what the argument means,—if it means anything. The people of the District are well satisfied and do not desire the franchise. They think theirs is the best governed city in America, and perhaps it is. At any rate its government satisfies them, and in this government they do not by voting have any share. Do not these facts clearly show that there is no such thing as the right to vote; that the franchise is a privilege and must be bestowed by each state according to the requirements of the situation. This certainly has been the law in all civilized countries. It is rather late in the day for our suffragist friends to try to revolutionize the system upon which civilization is founded in every country.

Taxation Without Representation.

But they say there should be no taxation without representation. Here we see confusion of thought. I agree that there should be no taxation without giving to the taxpayer the opportunity to be heard upon the merits of the proposed tax. This is a fundamental principle of justice and is in force in every one of these United States. To refer again to the District of Columbia. Residents there are taxed for the support of the District government. Before a bill passes Congress imposing such a tax every resident of the District, whether man or women, has the right to appear before the committee to whom the matter is referred. Not only this, but he or she has the right to represent the case to each individual congressman. What is true at Washington is true in every state and in every subdivision down to the smallest school district. Under the laws of this country nobody, great or small, has the right to impose a tax without giving to the taxpayer an opportunity for a hearing on this subject. This is guaranteed by law to man and woman alike. In this respect they are on terms of perfect equality.

While I was preparing this article, a Washington lawyer visited me. He is quite content not to have suffrage himself, but he has been campaigning in New York state, and has influenced hundreds of voters. This influence is not diminished by the fact that he does not vote himself; neither is the influence of Theodore Roosevelt or Oscar S. Straus diminished by the fact that they did not register in October, and consequently could not vote in the November election.

The fallacy in the suffragist argument lies in the failure to perceive that there are many ways of addressing the taxing power beside voting for the representative. In fact, this last is the least important of all. Every popular election is determined by a hundred considerations, some personal, some political, but very few such elections turn chiefly on the question of taxation. An intelligent man or woman can by reasonable argument influence legislators, whose business it is to impose taxes, far more effectively than by a vote at the polls.

Protective Laws.

The argument that is proposed by Mr. Taylor and Mrs. Benedict is that in the states where woman suffrage exists, the laws are better so far as the protection of the woman where women and children are concerned, than they are in the states where suffrage is not granted to women.

This I absolutely deny. There is no state in the world where the laws for the protection of women and children are more intelligent or effective than they are in the state of New York. A woman can engage in business on her own account; her earnings are free from the control of her husband; the husband is bound to support her and the children at all events whether the wife has an independent income or not. In the recent case of DeBrauwere v. DeBrauwere, 203 N. Y. 460, 38 L.R.A.(N.S.) 508, 96 N. E. 722, the court of appeals held that the husband who leaves his wife and children is liable to pay her any moneys which she has advanced out of her separate property for their support, according to his and their situation and condition of life.

It has been for many years the law of this state, that if the husband and wife unfortunately do not agree, and separate, the custody of the children should be given with the single view of the welfare of the child. It does not always follow that the mother is the most suitable person to have the care of the child; unfortunately, it is sometimes the mother who is the guilty person, who neglects her children and forsakes them.

Section 70 of the domestic relations law provides that the court, "on due consideration, may award the charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require."

Section 81 provides: "A married woman is a joint guardian of her children with her husband, with equal powers, rights, and duties in regard to them." Where is there any state that is more just in its treatment of the relation of parent and child?

Fallacy of Suffrage Argument.

The radical fallacy in the whole argument for woman suffrage is this: It treats the franchise of voting as a right, instead of an obligation; and its exercise as easy, instead of burdensome. It ignores the inherent distinction between the two sexes, and in effect takes away from the woman that which is distinctly hers, and hinders her in the discharge of those duties which she alone can discharge. It is opposed to the whole current of civilization. This tends to specialize, to assign to each that which he or she can do to the best advantage. No one objects to women who are qualified taking part in politics, or becoming nurses or physicians or professors, or entering, in short, upon any business or calling for which they are qualified. What we do object to is imposing the responsibility of the elective franchise upon all women, whereas the great majority of them are now sufficiently burdened, and ought not to be withdrawn from their present duties to undertake others for which they have no special fitness, and which are inconsistent with the proper discharge of those which nature has imposed upon them.

Everett P. Wheeler

The call to woman to leave her duty to take up man's duties is an impossible call. The call on man to impose on woman his duty, in addition to hers, is an unjust call. Fathers, husbands, brothers, speaking for the silent woman, I claim for them the right to be exempt in the future from the burden from which they have been exempt in the past.—*Lyman Abbott.*

Editorial Comment

You cannot reach by property tax under our conditions a result which will so equally distribute the burdens of taxation as you can by an income-tax law.—Hon. A. O. Bacon.

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Edited by Asa W. Russell.

The Income Tax

BY January three fourths of the states of the Union will have ratified the constitutional amendment granting Congress power to pass an income tax law. Notice of approval by thirty-four of the forty-eight states has already been received, and unofficial information received that two more, Ohio and Louisiana, have recently ratified the plan. Thirty-six states are required for the necessary majority.

The amendment grants Congress power to levy a tax on incomes "without apportionment among the several states and without a census or enumeration." It will enable the government to form an income tax law which will be safe from attack and will remove from the field of politics a stubborn subject.

The income amendment, when adopted, will be known as article XVI. and will become a part of the Constitution by proclamation of the Secretary of State. Notice has been received at the State Department that Connecticut, New Hampshire, Rhode Island, and Utah have acted adversely on the amendment. Ten states have not yet considered it, but the legislatures in more than half of these will meet in January and probably take favorable action. Only two more are needed to make the necessary thirty-six, but Secretary Knox will not issue the proclamation until one or two more than the required number have acted. Each state has a right to rescind its approval or rejection at any time.

The states that have officially approved the amendment are:

Alabama, Arkansas, Arizona, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington and Wisconsin; unofficially, Ohio and Louisiana.

The ten states that have not acted are:

Delaware, Florida, Massachusetts, New Jersey, New Mexico, Pennsylvania, Vermont, Virginia, West Virginia and Wyoming.

Child Labor

LAWLESSNESS directly encouraged by modern child labor is one of the more subtle effects set forth in the new History of English Apprenticeship and Child Labour by Jocelyn Dunlop and R. D. Denman, M. P. (London: T. Fisher Unwin, 1912). The book exposes the fallacy of the theory that children did not work prematurely and under bad conditions before the 19th century, but it also shows in detail how the modern child wage-earner differs from his predecessor. He is an independent wage-earner, free from restraint of any kind; machinery has made his work as valuable as an adult's; and the character of his work has ceased to be educative and has become deadening when not actually demoralizing. The child-laborer of today tends always to become the lawless, useless citizen, incompetent and unemployed.

The problem in America is so essentially similar to the problem in England, except that it is made more complicated by the number and diversity of the states, that the conclusions of these English writers deserve attention. Compare, for example, with the condemnation of street trading in Edward N. Clopper's new book "Child Labor in City Streets," the following extracts quoted by Mr. Denman from the Report of the Departmental Committee of 1910. "In crowded centers of population, street trading tends to produce a dislike or disability for more regular employment; the child finds that for a few years money is easily earned without discipline or special skill; and the occupation is one which sharpens the wits without developing the intelligence. It leads to nothing permanent, and in no way helps him to a future career. There can be no doubt that large numbers of those who were once street traders drift into vagrancy and crime. Chief constables testified that street trading is the most fruitful apprenticeship to evil courses."

Or, compare statements of Mr. Holcombe, chairman of the new Minimum Wage Board in Massachusetts, with this strong statement about parasitic industries: "Even if in fact a trade, dependent upon cheap and injurious child labor, were threatened with extinction by the withdrawal of that labor, the state should have the courage to withdraw it." "There can be no more certain way to industrial ruin than to sacrifice the coming generation of industrial workers to the present and passing generation."

Trespassers Killed on Railroads

A MOST enlightening study of the problem of trespassing on railways is presented in the Railway Age Gazette by Frank V. Whiting, general claims attorney of the New York Central Lines. Out of 10,396 persons killed on our railways during the fiscal year 1911, 5,284 met death while trespassing on railway property; and of these 4,125 were reported as having been struck by engines or cars, which means that they were walking or standing on the tracks. It has been commonly assumed that most of the trespassers killed are tramps or "hoboes," and even railway men will be surprised at the facts given by Mr. Whiting. From an examination of the reports of accidents resulting in the deaths of 1,000 trespassers, he concludes that the great majority are not of the class of aimless wanderers who might be expected to be careless of their lives, but are business or professional men, regularly employed workingmen, and members of their families, whose deaths are a distinct loss to the community. Most of them are people living or working near the railway tracks. Undoubtedly public authorities have excused to themselves their failure to take steps to keep off railway tracks people who have no business there, on the theory that a majority of those killed are of a kind whose loss is of little consequence, or even a good riddance to the community. Mr. Whiting's demonstration that most of the people killed while trespassing are of a class that is in every way comparable with the passengers and employees killed in train accidents ought to lead to more intelligent co-operation on the part of public officials with the efforts of the railways to reduce this kind of fatalities, which can only be reduced by the passage and enforcement of proper laws.

Among the New Decisions

Custom is the best interpreter of laws.—Law Maxim.

Assault — intent to kill — alternative intent. The few cases on the subject are in accord with the decision in People v. Connors, 253 Ill. 266, 97 N. E. 643, annotated in 39 L.R.A.(N.S.) 143, which holds that one is guilty of assault with intent to kill who points a loaded revolver at another to compel him to do a specified act which the assailant has no right to demand, under threat to kill him if he does not comply with the demand, although death may be avoided by such compliance.

Bankruptcy — partnership — proof against firm and individual. One whose bonds have been converted and consumed by a brokerage firm is held in Reynolds v. New York Trust Co. 110 C. C. A. 409, 188 Fed. 611, not entitled, upon the theory that the tort is both joint and several, so as to permit him to proceed in contract, to prove his claim in bankruptcy proceedings both against the estate of the firm and that of an individual partner, who is not shown to have participated in the conversion or benefited thereby.

The decisions treating of double proof of claim against estate of firm and individual partner, are gathered in the note appended to the foregoing case in 39 L.R.A.(N.S.) 391.

Bills and notes — extension by attorney for collection — effect on surety. That a slight indulgence by an attorney charged with the collection of a note to the maker, not authorized or ratified by the holder, will not release the sureties on the instrument, if no security for the payment of the note is thereby lost or impaired, is held in Hall v. Presnell, 157 N. C. 290, 72 S. E. 985, annotated in 39 L.R.A. (N.S.) 62.

Carrier — closed street car in motion — attempt to board — negligence. That one is negligent as matter of law in attempting to board a street car when the vestibule doors are closed and it is in motion, so that all that he can do is to stand on the step and maintain his position by clinging to the hand-holds, is held in the Wisconsin case of Sigl v. Green Bay Traction Co. 135 N. W. 506, 39 L.R.A. (N.S.) 65.

Carrier — property lost from car — duty to permit passenger to alight. Whether it is the duty of a carrier to stop its train or car for an article dropped by a passenger —a question which the courts had apparently determined but once previously —was considered in Bursteen v. Boston Elev. R. Co. 211 Mass. 459, 98 N. E. 27, 39 L.R.A.(N.S.) 313, holding that the conductor is not bound to stop a car between stations in a subway to permit a passenger to alight to recover property accidentally dropped from the car, where to do so would involve risk of collision and place the passengers in peril.

Consent by guardian — authority of court. The decision in Philadelphia Trust, S. & D. Ins. Co. v. Allison, 108 Me. 326, 80 Atl. 833, annotated in 39 L.R.A. (N.S.) 39, holding that a court having jurisdiction to appoint a guardian for an habitual drunkard may, if it also has full equity powers, authorize the guardian to consent to the conveyance of real estate situated in another state, and which has been placed in trust for the ward prior to his becoming incompetent, with authority in the trustee to convey it with the consent of the beneficiary, appears to be a case of first impression.

Covenant — to warrant and defend — liability for costs. That a grantor is not, under his covenant to warrant and defend title against all lawful claims, liable for costs of a successful defense against an attempt by a stranger to establish a lien on the property, is held in Hoffman v. Dickson, 65 Wash. 556, 118 Pac. 737, which is accompanied in 39 L.R.A.(N.S.) 67, by a note setting forth the earlier decisions on the subject.

Damages — injunction against constructing dwelling — measure. The damages for wrongfully enjoining the erection of a dwelling on a parcel of real estate are held in the Washington case of Stone v. Hunter Tract Improv. Co. 122 Pac. 370, 39 L.R.A.(N.S.) 180, to be the reasonble rental value of the property with the building upon it, during the time its enjoyment was prevented by the injunction, where the building would have been erected but for the injunction, and was actually built as soon as the injunction was dissolved.

Damages — negligence of telephone company — knowledge of consequences. The liability of a telephone company for failure to make connections for a subscriber was considered in the Arkansas case of Southern Teleph. Co. v. King, 146 S. W. 489, annotated in 39 L.R.A.(N.S.) 402, holding that a telephone subscriber cannot hold the company, which fails to answer his call, liable for injury caused by going to the central office in a sick and weakened condition to obtain medical aid for a member of his family, where it had no notice that such injury was likely to result from its negligence.

Damages — receivership — effect. The first case involving the question whether the amount of damages to be awarded a plaintiff can be affected by the fact that the defendant is insolvent, is apparently Rogers v. Hiram J. Allen Lumber Co. 129 La. 900, 57 So. 166, 39 L.R.A.(N.S.) 202, holding that the amount to be awarded plaintiff in an action for damages for personal injury cannot be affected by the suggestion or consideration that the defendant company has been placed in the hands of a receiver, and is paying but 10 cents on the dollar to its creditors.

Divorce — restoration of property — transfer to defraud creditors. Property transferred by a man to his wife to defraud his creditors is held in Coleman v. Coleman, 147 Ky. 383, 144 S. W. 1, not to be within the operation of a statute providing that in case of divorce any property which either party may have obtained from the other during marriage, in consideration or by reason thereof, shall be restored to the party from whom it was obtained.

The cases treating of the applicability of a statutory provision for the restoration of property in case of divorce, to voluntary gifts or conveyances, are gathered in the note appended to the foregoing decision in 39 L.R.A.(N.S.) 193.

Evidence — criminal law — flight — presumption of guilt. That no presumption of guilt arises from flight after the commission of a crime is held in the case of Territory v. Lucero, 16 N. M. 652, 120 Pac. 304, which is accompanied in 39 L.R.A.(N.S.) 58, by the decisions dealing with this question.

False imprisonment — detaining witness — liability of railroad company. A railroad company is held in New York, P. & N. R. Co. v. Waldron, 116 Md. 441, 82 Atl. 709, to be liable for false imprisonment, if its conductor, when directing officers to arrest a disorderly passenger, causes him to lock up another passenger

who merely witnessed the disorder, as a witness against the guilty party.

The few authorities on the question of the detention of a person as a witness as false imprisonment are gathered in the note accompanying this case in 39 L.R.A.(N.S.) 502.

Fire — interference with apparatus — liability. A railroad company which permits a train to stand on a street crossing in violation of statute is held in the Indiana case of Cleveland, C. C. & St. L. R. Co. v. Tauer, 96 N. E. 758, 39 L.R.A. (N.S.) 20, to be liable for injury done to private property through the inability of the city fire apparatus to reach it because of such obstruction.

The duty of a railroad or street railway company to avoid interference with extinguishment of fire is considered in notes in 12 L.R.A.(N.S.) 382, and 20 L.R.A.(N.S.) 1110.

Judge — qualification — disbarment proceedings — membership in bar association. That a judge is an honorary member of a bar association is held in Bar Asso. v. Casey, 211 Mass. 187, 97 N. E. 751, annotated in 39 L.R.A.(N.S.) 116, not to disqualify him to sit in proceedings instituted by the association for the disbarment of an attorney.

Jury — trover — complicated action. In trover by the holder of a chattel mortgage to recover possession of the chattels from one denying his title because of subsequent conveyances, it is held in Daley v. Kennett, 75 N. H. 536, 78 Atl. 123, annotated in 39 L.R.A.(N.S.) 45, that the court cannot deny defendant a jury trial because the matters are so complicated and involved that they cannot be clearly understood by a jury, where no accounting, marshaling, or other equitable relief is necessary.

The correctness of the decision admits of no question. The complication of facts has never been a reason for withdrawing issues from a jury, except in matters of account.

Landlord and tenant — absence of fire escape — waiver of rent. The owner of a building, who, during the term of a lease thereof, unlawfully fails to equip such building with fire escapes, is held in Leuthold v. Stickney, 116 Minn. 299, 133 N. W. 856, 39 L.R.A.(N.S.) 231, not entitled to maintain an action upon such lease for rent.

Landlord and tenant — right to outside walls. The lessee of a storeroom, unless restrained by the terms of his lease, is held in the West Virginia case of Salinger v. North American Woolen Mills, 73 S. E. 312, annotated in 39 L.R.A. (N.S.) 350, to have the exclusive right to the use of the outside walls of that portion of the building covered by his lease, for advertising signs, to the exclusion of a lessee of another part of the same building, but he has no right to occupy with such signs, or for any purpose, the outside wall not inclosing his part of the leased premises.

Marriage — annulment — fraud — intention of abandonment. The question whether the intention not to live with the spouse, which exists at the very time of the marriage, constitutes such fraud as will warrant a divorce or an annulment of the marriage, seems to have been passed upon in but one case prior to the Alabama decision of Johnson v. Johnson, 58 So. 418, 39 L.R.A.(N.S.) 518, holding that a marriage cannot be annulled for fraud because the man entered into it to prevent the woman from appearing against him in a prosecution for seduction, with the intention of abandoning her afterwards.

Master and servant — druggist — liability for negligence of clerk. That a druggist is not relieved from liability for injuries caused by the negligence of his clerk in compounding a prescription, by the fact that the clerk is a licensed pharmacist, is held in Tombari v. Connors, 85 Conn. 231, 82 Atl. 640. This decision, as appears by the note accompanying it in 39 L.R.A.(N.S.) 274, is supported by the scant authority upon the point.

Mechanics' lien — owner — mortgagee out of possession. A mortgagee out of possession is held in Allis-Chalmers Co.

v. Central Trust Co. 111 C. C. A. 428, 190 Fed. 700, annotated in 39 L.R.A. (N.S.) 84, not an "owner" within the meaning of a statute permitting a mechanics' lien for lumber and materials furnished by consent of the owner, so as to charge his interest with a lien in case he knowingly permits materials to be furnished without protest.

Militia — enlistment of minor — validity. Under the Constitution and statutes of Florida, a minor over the age of eighteen years is held in the Florida case of Acker v. Bell, 57 So. 356, to be bound by his enlistment into the military service of the state, even though the consent of his parents was not obtained for such enlistment.

The note appended to the report of this decision in 39 L.R.A.(N.S.) 454, presents the cases pertaining to the enlistment of a minor without his parent's consent in the Army, Navy, or militia.

Mortgage — vendee — assumption of debt. Where a purchaser of a part of mortgaged premises assumes the payment of all of the mortgage on the whole of such premises, the land so purchased is held in the New Jersey case of Chancellor v. Towell, 82 Atl. 861, to be liable for the mortgage debt before the portion of the mortgaged premises remaining unconveyed by the mortgagor or his estate can be sold in satisfaction of the mortgage debt.

This decision, as shown by the note accompanying it in 39 L.R.A.(N.S.) 359, is in accord with a well-recognized exception to the application of the inverse order of alienation rule. The reason for this exception is that, to hold the so-called rule of inverse order of alienation applicable in such a case would produce a result not in accord with the principles of equity, and since the rule itself is of equitable origin, it will not be applied where the equitable reasons upon which it rests cease to exist, and are entirely wanting.

Municipal corporations — forbidding keeping of hogs — authority. Statutory authority to make rules for the preservation of health is held in State v. Rice, 158 N. C. 635, 74 S. E. 582, to include power to forbid the keeping of hogs within the territory over which the municipal authority has jurisdiction.

The question of the power of a municipality to prohibit the keeping of live stock is treated in the note appended to the foregoing decision in 39 L.R.A. (N.S.) 266.

Negligence — pathway — alteration — duty to licensee. A railroad company in cutting, for drainage purposes, a ditch across a path on its right of way, which has been used by the public for many years, is held in the Arkansas case of Chicago, R. I. & P. R. Co. v. Payne, 146 S. W. 487, annotated in 39 L.R.A.(N.S.) 217, to be under no obligation to leave it safe for licensees, so as to render it liable for injury to one who, in attempting to use the path in the dark, falls to his injury from a pile of dirt left in the path.

Officer — compensation by individual. The rule that a public officer cannot recover compensation from third persons for the performance of acts within the scope of his official duty, even though the acts were performed at their request, or though they may have expressly promised to pay him, is held in the Oklahoma case of Coggeshall v. Conner, 31 Okla. 113, 120 Pac. 559, annotated in 39 L.R.A.(N.S.) 81, to apply to an attorney acting by appointment by order of the district court, as special prosecutor for the state, the regular county attorney being disqualified.

Perjury — unnecessary oath. To falsely make oath before a notary public in order to obtain a saloon license is held in State v. Parrish, 129 La. 547, 56 So. 503, not to constitute perjury, when the law governing the issuance of such licenses does not require such an oath. An oath must be administered in accordance with the law before perjury can be charged.

The decisions pertaining to false swearing as perjury, where an oath, or the particular one administered, was not required, are gathered in the note which accompanies the report of the foregoing case in 39 L.R.A.(N.S.) 96.

Poor — failure to relieve — liability. It is decided in the Iowa case of Wood v. Boone County, 133 N. W. 377, annotated in 39 L.R.A.(N.S.) 168, that neither a county nor its overseer of poor is liable for the loss by a transient pauper of his feet, because it failed to give him proper attention when he came into its borders with frozen feet, although the statute requires relief to be furnished under such circumstances, at least if the overseer did not know that it was dangerous to send the pauper on his way, as he was empowered by statute to do, without relief.

Railroad — partition of right of way. Actual adjudications upon the partition of a railroad right of way appear to be very few. The Mississippi case of Hill v. Woodward, 57 So. 294, 39 L.R.A. (N.S.) 538, holds that a railroad company which has secured a deed for its right of way from one only of two tenants in common cannot resist partition of the property at the suit of the other tenant, on the theory that it would be contrary to public policy to permit it.

Religious society — attempted diversion of property from trust — liability for counsel fees. The question of the right of the trustees and majority members of a religious corporation to bind the corporation for counsel fees which they, in good faith, incur, in defending unsuccessfully an action brought by the minority shareholders, appears to have been considered for the first time in Kanneberg v. Evangelical Creed Congregation, 146 Wis. 610, 131 N. W. 353, 39 L.R.A.(N.S.) 138, holding that the trustees and majority members of a religious corporation, who in good faith have attempted to make a use of the property which the minority allege to be a diversion from the trust for which it was acquired, may bind the corporation for counsel fees in defending their position against the attack of the minority, although the minority are successful and the contemplated diversion is enjoined.

Savings banks — loss of funds — personal liability of trustees. Salaried trustees of a savings bank are held in Greenfield Sav. Bank v. Abercrombie, 211 Mass. 253, 97 N. E. 897, to be personally liable for loss of its funds which they lend in excess of the statutory limit for the security furnished, if, by the exercise of reasonable care and prudence, they ought to have known that they were exceeding the limit.

The decisions relating to the liability of bank directors in case of bad loans or investments are collected in the note appended to the report of the foregoing case in 39 L.R.A.(N.S.) 173.

State — boundary — change of channel of stream. The boundary and jurisdiction of a state which has been along the main channel of a stream is held in the Wisconsin case of State v. Bowen, 135 N. W. 494, annotated in 39 L.R.A.(N.S.) 200, not changed by the construction by a railroad company, of a dam which throws the main channel to the other side of an island for the purpose of convenience in the construction of a bridge.

Statute of frauds — parol evidence to show fraud in contract. In an action to recover from an agent to purchase real estate, the secret profit which he made by falsely representing that he was compelled to pay for the property the price paid him, parol evidence is held in Lavalleur v. Hahn, 152 Iowa, 649, 132 N. W. 877, 39 L.R.A.(N.S.) 24, to be admissible on the ground of fraud, to show that he had, in fact, been acting as agent, and promised to purchase as cheaply as possible, although the positive written contract to pay him a certain sum for the property as vendor is thereby contradicted.

No other case has been found involving the precise question as to the admissibility of parol evidence to show that the purported vendor in a written contract for the sale of property was in reality an agent of the other party, employed to purchase the property.

Tax on dogs — uniformity. A dog tax need not be uniform according to the value, when assessed by a municipality under charter authority to regulate dogs and impose a tax on them, since it is not a property tax, but is assessed under

the police power for purposes of regulation, is held in Paxton v. Fitzsimmons, 253 Ill. 355, 97 N. E. 675, which is accompanied in 39 L.R.A.(N.S.) 155, by a note in which the decisions pertaining to the character of a dog tax are presented.

Tax — exemption — parsonage. An exemption from taxation of property used exclusively for religious work is held in First Congregational Church v. Board of Review, 254 Ill. 220, 98 N. E. 275, annotated in 39 L.R.A.(N.S.) 437, not to include a parsonage used as a residence for the pastor of a church and his family, and such religious work as naturally would center around the pastor's residence.

Recent English and Canadian Decisions

Animals — duty of owner of cat with kittens, to persons coming on premises. The Law Quarterly Review states that the following points are decided by a divisional court, with at least sufficient solemnity, in Clinton v. J. Lyons & Co. [1912] 3 K. B. —, 81 L. J. K. B. N. S. 923.

"A cat is not a dangerous wild beast, and the addition of kittens does not make her so.

"A restaurant keeper who puts up a notice that dogs are not admitted, but in fact admits them, cannot be said to invite customers to bring their dogs. A customer who does so is, as regards the dog, only a licensee.

"If a cat with kittens, getting loose in a restaurant, bites first a customer's dog and then that customer, the damage to the customer, not being of a kind which could be reasonably foreseen, is too remote (even on the footing of invitation, semble).

"The damage to the dog is not actionable for a different reason; the cat has as much right to be there as the dog, and since cats and dogs are likely to fight in any case, the kittens are irrelevant."

Banks — acceptance of check by branch after suspension of its principal. That, although a bank and its branches constitute in point of law but one juridical person, the acceptance of a check by one of the branches of the bank upon which it is drawn, even after the decision of the board of directors to suspend, but before becoming aware of this decision, is held in Brunelle v. Ostiguy, Rap. Jud. Quebec 21 B. R. 302, to free the drawer and constitute a payment of the drawer's debt to the payee.

Bigamy — belief in divorce as defense. The supreme court of Alberta has lately held that an honest belief on the part of a defendant that he has obtained a valid divorce constitutes no defense to the charge of bigamy, either at common law or under a statutory provision making divorce from the bond of the first marriage a valid excuse. Rex v. Bleiler, 19 Can. Crim. Cas. 249.

Criminal law — indictment — amendment. Rex v. Cohen, 26 Ont. L. Rep. 497, holds that it is not within the power of the court, under a statute which provides: "If on the trial of any indictment there appears to be a variance between the evidence given and the charge in any count in the indictment . . . the court before which the case is tried may, if of opinion that the accused has not been misled or prejudiced in his defense by such variance, amend the indictment or any count in it, or any . . . particular so as to make it conformable with the proof,"—to amend an indictment for obtaining money by false pretenses, so as to make it charge the obtaining of credit by false pretenses, the two charges not being substantially for an offense of the same kind.

Criminal law — evidence — illegal operation — statements by deceased woman. Statements made by a deceased woman, not as part of the *res gestæ*, that she intended to operate, and that she had operated upon herself, in order to pro-

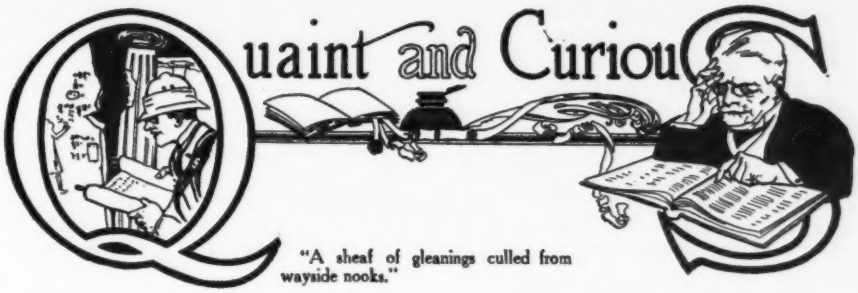
cure a miscarriage, are held in Rex v. Thomson [1912] 3 K. B. 19, not to be admissible in evidence on behalf of one charged with having performed the operation.

Infants — bank deposit — accountability of bank for money paid out on infant's checks. Ordinarily, only decisions of the higher appellate courts are chronicled in these columns, but the rule of exclusion is not so rigid as to bar a decision by a court of first instance where a question of novel character is presented. The absence of direct authority on the point dealt with in Freeman v. Bank of Montreal, 26 Ont. L. Rep. 451, renders it worthy of notice. It was there held that a bank is not accountable to an infant depositor for money paid out upon his check, the decision being based both on principles of common law, and the provisions of the Canadian bills of exchange act, that "where a bill is drawn or indorsed by an infant . . . the drawing or indorsement entitles the holder to receive payment of the bill." Middleton, J., before whom the case was tried adduces, in support of his conclusion, *dicta* in certain English cases to the effect that the disability of infancy goes no further than is necessary for the protection of the infant; also decisions holding that an infant's release is a bar to his right to recover the sum actually received by him, and that an infant cannot, upon the ground of disability to contract, recover money paid out by him for something which he has consumed or used.

Limitation of actions — possession by mortgagee — action to redeem. One to whom wild land has been conveyed as security for a loan and who has for more than twenty years paid the taxes thereon, which was the only act of possession possible, and of which the mortgagor, who in the meantime made no payments, was aware, is held by the privy council in Kirby v. Cowderoy [1912] A. C. 599, 107 L. T. N. S. 74, reversing the decision of the court of appeal of British Columbia, to be a mortgagee in possession within the meaning of a statute barring an action to redeem where not brought within twenty years next after the time at which the mortgagee obtained possession.

Principal and agent — limitation of authority — pledge by agent of stock belonging to principal. An agent to whom his principals had intrusted documents of title to certain shares of stock, including a blank transfer signed by them, to be used in obtaining a loan of not less than a certain amount, borrowed a less sum on terms which were to his personal benefit, handing the documents, including the transfer, to the lender, who acted in good faith and without express notice or knowledge of the limitation of the agent's authority, and who subsequently inserted his own name in the blank transfer and obtained a certificate for the shares. The principals having brought an action for the return of the shares, it was held by the English court of appeal, in Fry v. Smellie, 81 L. J. K. B. N. S. 1003, that they were estopped from setting up the limitation of the agent's authority against the lender, who was held not to be put upon inquiry in regard thereto by the presence of the blank transfer; the court distinguishing the case in this respect from those in which the person having such *indicia* of title, and was not vested by the owner with any authority to dispose of the stock; as, where stock pledged is wrongfully repledged by the pledgee.

Unfair competition — imitation of "get-up" — right of sales' agent to maintain action. The sole agents, in England, for sale of an article made by a particular manufacturer are held in Dental Mfg. Co. v. C. De Trey & Co. [1912] 3 K. B. 76, to have no standing to maintain an action against a person who passes off an article made by himself as the article made by that manufacturer, merely upon the ground that the agents' profits through the sale of that article are thereby diminished, where there is nothing in the article sold by the agents to indicate any association of them or their business therewith.



"A sheaf of gleanings culled from wayside nooks."

Tax on Bachelors. At the last sitting of the town council of Nagyperkata, Hungary, it was decided almost unanimously to introduce a special tax on bachelors over twenty-four. The amount is to vary between 20 pence and £4 according to the pecuniary circumstances of each unmarried man. The proceeds will be entirely devoted to the foundation and maintenance of an asylum for poor homeless children.

The idea of taxing bachelors—an idea that has been raising some disturbance and some laughter—is not a new one. A bill was presented in the Massachusetts legislature, imposing a tax of $5 per year on every unmarried man of thirty-five years, "unless he can satisfy the assessors that he is not of good moral character or is otherwise unfitted for matrimony." It was set forth in the hearings on the bill that "the funds so obtained are to be expended by the overseers of the poor for the support of deserving spinsters who have passed or are believed to have passed the marriageable age."

A man who is so wary and skilful as to elude the graces of woman would have no trouble in dodging a thing so easily avoidable as a personal tax. The fact that a man has succeeded in becoming a bachelor shows that he is a natural tax dodger, and has evaded the heaviest tax that some men have to pay—and the lightest and most agreeable that others have to pay.

Bachelors have been punished before. England imposed a tax on bachelors from 1695 to 1706. Every bachelor of twenty-five and every childless widower of five years' standing had to pay a minimum tax of a shilling a year for five years, rising according to the social standing of the taxpayer.

All married men should support the proposal to tax bachelors, not at all on the principle that misery loves company, but on the ground that there ought to be a more equitable distribution of the burdens of society.

An Added Power of Music. The tax collector in Sharon, Pennsylvania, states W. R. Rose in the Cleveland Plain Dealer, is going after delinquents in a novel way. He intends to hire a band, draw it around on a truck, and have it stop and serenade each delinquent. The collector believes that while the music would lose those soothing qualities which are supposed to attach to it, a desire to avoid notoriety might hurry the slow-pays to the captain's office.

As far as known, the official in charge has failed to announce the *menu* of selections he proposes to offer. Among the other gems he can include, "If Yo' Ain't Got No Money Yo' Needn't Come Round," and "When It's All Goin' Out An' There's Nothin' Comin' In," not to mention, "I Don't Want No Cheap Man."

Of course there may be rocks ahead for this Sharon band—to say nothing of brickbats.

But if sounding brass and booming sheepskin can thaw out frozen debtors, the Sharon collector will be there with the heat.

Taxing the Cat. Switzerland is the land of political and social experiments, and we usually legislate with one eye on that little country of federation, democracy, referenda, prohibition, compulsory service, and liberty. And now Switzerland—or, at least, that bit of it about Lucerne—proposes to put a tax on cats. We shall watch that experiment with interest, for the tax will not produce much revenue, but will spell—let us not shirk the word—protection against the enemies of birds and sleep. Each cat shall wear a collar with its registered number; the cat without a number will be arrested and destroyed. Wherefore the people that like cats will keep them indoors or pay for their outdoor amusements. Other people's cats are always a nuisance, and the collar and the tax will place a certain responsibility on the cat, and—what is more important—on its owner.—Westminster Gazette.

Queer Taxes of Other Days. Chancellors in former times exercised all their ingenuity to raise revenue, and many were the curious taxes they imposed.

Pitt, during the great war with France, tried every tax imaginable. He put a tax on hair powder. For a hundred years the wig, introduced from France, was very fashionable. But about the middle of the eighteenth century, it began to fall into disuse and hair powder took its place. Men tied their natural hair in a queue and covered it with powder. To appear at any social function with unpowdered hair was a bad breach of etiquette.

Taking advantage of the fashion, Pitt put on the "guinea pig" tax, as it was called, charged on a householder in respect of every person in his house who used hair powder. But there were many exemptions. In addition to the royal family and their servants, clergymen not possessing a hundred pounds a year, subalterns and privates in the Army, and officers of the Navy under the rank of command, were exempted.

And to relieve the man with a large family, a father with more than two unmarried daughters could get a license for any number by paying two guineas.

Pitt expected a revenue of more than £200,000; but the Whigs, headed by the Duke of Bedford, decided to balk the chancellor by abandoning the use of hair powder.

In September, 1795, some of the Whig leaders met in solemn conclave at Woburn Abbey and there sorrowfully cut off their queues.

Curled and oiled whiskers took the vacant place, and powder was left to menservants; but it was not until 1869 that the hair-powder tax was repealed as not being worth the cost of collection.

War with France was the cause of the English tax on dogs. In 1796 the impost commenced, but it was limited to persons keeping sporting dogs or a number of dogs.

For a long time, from 1840 to 1853, dog owners paid a very heavy tax. For all nonsporting dogs the tax was nine shillings eight pence, for sporting dogs, fifteen shillings four pence, and for greyhounds, one pound two shillings.

But in 1853 Mr. Gladstone changed the tax to twelve shillings for any kind of dog. Even this was too high. Not one fourth of the owners paid, and so great became the numbers of dogs on the public roads that something like a panic arose throughout the country.

In London the parks were infested by stray dogs and it was a common sight to see dozens of them following riders in the Row, barking at the horses.

So to prevent evasion the tax was reduced to five shillings, and afterwards raised to the point where it now stands.

Probably the worst taxes ever imposed in England were those on paper, newspapers, and advertisements,—the tax on knowledge it has been called.

How much these taxes retarded the progress of the country there is no calculation. The paper duty, William III.'s invention, commenced in 1694 and lasted down to 1861,—over a century and a half.

It was at one time £28 a ton and when Charles Knight published the "Penny Cyclopedia" (1830) he had to pay £20,000 duty on the paper. Only 14,000 tons of paper were used in 1803 and only 28,000 tons in 1831.

Then in 1711 Queen Anne put a duty on newspapers, a penny per sheet, raised

to fourpence by George III., and not abolished until 1855.

To make matters worse an advertisement duty was imposed in 1712, also by Queen Anne.

For four years shopkeepers were taxed by Pitt, from 1785 to 1789. It was not much, only sixpence to the pound up to £10 rent and two shillings to the pound when the rent exceeded £25. But a great outcry arose. Pitt said the shopkeeper could pass the tax on to the customer; the shopkeeper said he could not and in the end the shopkeeper was victorious.—Sunday Illustrated Magazine.

Flowers and Facts. There is an Indianapolis attorney who is known for his dignity and who rarely indulges in "flowery" oratory in arguing a case. Some years ago, however, he was engaged in a murder case in which the guilt of the prisoner was apparent, and the lawyer's friends advised him to be "flowery"—in an effort to appeal to the sentiment of the jurors. So the attorney took his friends' advice.

"Down in the hills of old Kentucky stands a little cottage," he began. "Around the cottage vines are clinging, and in the doorway stands a gray-haired mother waiting—

"As I was saying, down in the hills of old Kentucky stands a little cottage. Around the cottage vines are clinging, and in the doorway stands a gray-haired mother waiting—"

The lawyer paused and his face turned red.

"And while she is standing there waiting," he continued, "I guess we might as well discuss the facts in this case."—Indianapolis News.

Some Judicial Notice. "In October and November the apartment was chilly and uncomfortable and was not heated to a temperature of 65 degrees, either Fahrenheit or Centigrade, if we may take judicial notice that a normal person will not be chilly and uncomfortable at either of those temperatures." Siebold v. Heyman, 120 N. Y. Supp. 105.

Converting 65 Centigrade to its equivalent in Fahrenheit we have 149 above the Fahrenheit zero. This strongly fortifies the judicial knowledge that one would not be chilly at that temperature.

Indiana Corn Criminally Tall. According to reports from Indiana, the corn in that state has grown so tall this season that it has become dangerous to cross a railroad which runs along one of the corn fields. A traction car recently killed a couple who attempted to cross the track where the towering corn was growing, and when the trial for damages came up it was shown that the accident was due to the presence of the high corn on each side of the road, which obstructed the view of both the victims and the crew on the car.

The proof in the case bore out the contention that ordinary precaution on the part of the railway operators was not enough, in view of the fact that the high corn rendered the car invisible, and a crossing that had ordinarily been regarded as safe had become one of great hazard. We imagine the courts of Indiana will not render a decision against the growth of high corn in order to make railroad crossings less hazardous. For, if deprived of their corn, the people of that state would have little use for their railroads, and if there is any regulating done by the courts in the dispute between the corn raisers and railroads, it is safe to say that no court decree will ever be handed down in that state that the height of corn must be reduced. On the other hand, it will be, the running of trains shall be done with caution consistent with conditions.—Nashville American.

The Wise Jury. Russell Duane, the lawyer, is authority for the statement that a successful jury lawyer will talk up, not down, to the twelve men in whose hands his client's fate rests. Juries like to draw their own conclusions from the facts, and they hate to be patronized or insulted. "A little circumstance that happened in a Philadelphia common pleas court illustrates this," says Mr. Duane. "A lawyer was defending a suit for damages for personal injury. His defense was contributory negligence, based upon drunkenness, but he cautioned his witnesses to scrupulously avoid testifying

that the plaintiff was drunk. 'How did he act?' a witness was asked. 'Oh,' was the response, 'he acted awfully funny, I thought. He lurched from side to side, swayed, staggered, and his head kept bobbing forward and backward.' At this point the foreman of the jury was seen to lean over to the juror seated next to him and whisper hoarsely, 'Why, that man was drunk.' The jurors all thinking so, too, were quite tickled over their own acumen in drawing an inference of facts. On the other hand, if the lawyer's witnesses had testified that the plaintiff was drunk, it would have immediately thrown the jury into a belligerent mood. Jurors usually drink, and if they had had to listen to a witness, who reflected on the drinking habit, they would have retaliated by giving such a witness's testimony scant consideration, if any."—Philadelphia Record.

Jury of Clergymen. A coroner's jury in Philadelphia, composed entirely of clergymen, returned a verdict of gross negligence against an automobile driver who had run over and killed a woman. The jury was composed of Presbyterian, Lutheran, Protestant Episcopal, Methodist, and Catholic ministers. The reason given by the coroner for having these gentlemen of the cloth to sit during inquests into fatal automobile accidents was to enable the clergymen to reach those members of their congregations who own automobiles and have them cooperate to end reckless speeding. Recently in Chicago a special court was established for trying automobile cases. The automobile has come to stay, but the reckless driver must go.—New Orleans Picayune.

Some Odd Reasons for Wanting Divorce. It was a Kansas City man, a veteran of the Civil War, who applied to the courts for a separation from his helpmate and her numerous collection of cats and dogs. Not that he had any prejudice against "pets," as he informed the judge, but that they were eating him out of house and home, and even crowded him out of bed at night, to which hardship, he preferred Libby Prison.

Fifteen Angora cats, kept in the kitchen of his home, were fifteen Angoras too many for Edgar R. Taylor, of Lowell, Massachusetts, a former ocean steamer captain who is suing for a divorce.

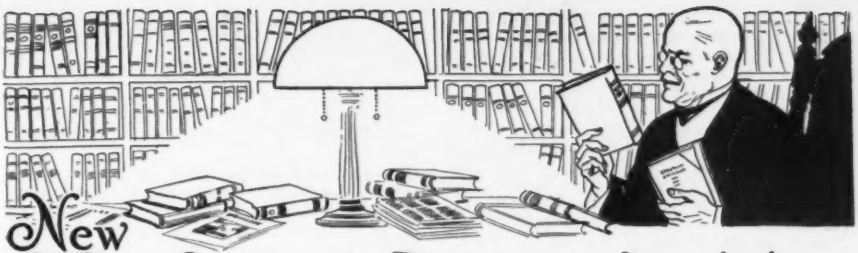
An East St. Louis jury, after deliberating twenty-four hours, decided a woman could not obtain a divorce because her husband had given her a good spanking. There was no argument as to the soundness of the spanking. Lindell Youell, for six years a detective on the East Side department, admitted the chastisement was good and sound. Mrs. Annie Rebecca Youell, who sought the decree, told the jury there was not a gentle love tap in the whole affair. The wife asserted her husband had been excessively cruel, that he often threatened her life, and promised she would soon be in Heaven.

But an Iowa judge was recently more considerate, and decided in favor of a wife who was so chastised by her husband, in the presence of dinner guests.

'Tis said that "the way to a man's heart is through his stomach." But if the good wife ignores this truism and refuses to cook the eggs for her husband's breakfast to his liking, he is not justified in deserting her, and if he does so she is entitled to a divorce. So ruled the judge in the case of Bill Arlington, who a generation ago known from one end of the country to the other as a minstrel of the old school. Before granting the decree, Judge Conrey asked Billy if he had any statement to make.

"Well, your Honor," said Billy, "I did leave her, I had to. She did not cook my eggs right. Try as I would, I could not make her understand. I just had to clear out."

Cut it Short. "Spell it again, please," said Deputy County Clerk Steffen when Mike Papatheodorekuwomdropolos, a Greek, gave his name as an applicant for citizenship papers. Mike condescended to repeat the letters slowly, and the deputy, after laborious efforts, managed to get the entire name recorded. "You're not going to stick to that name when you're an American citizen, are you?" queried Steffen. "No, I think not," replied Mike. " 'Papa' or 'Papatheodore' will be sufficient when I's naturalized."



New Books and Recent Articles

"Men disparage not antiquity who prudently exalt new inquiries."—Sir Thomas Browne

"A Federal Suit at Law." By W. S. Simkins. (The Lawyers Co-operative Publishing Company, Rochester, N. Y.) $4.50.

This work is intended as a complement to the author's "Suit in Equity in Federal Courts," which met with a kind reception at the hands of the legal profession.

It was the purpose of the author to follow the proceedings in a suit at law in the Federal court, from its inception to its final determination, and to point out when the practitioner may rely on the state rules of practice, in the several steps of a suit at law; or, in a word, to show when the Federal courts will conform to the procedure of the state courts and when they will not.

Professor Simkins, who is connected with the Law Department of the University of Texas, has admirably performed his task, and it is believed that the practitioner will find in it a solution of any doubt that may arise as to any step necessary in a suit at law in the Federal courts.

"History of French Private Law." By Jean Brissaud. Translated by Rapelje Howell. (Little, Brown, & Co., Boston) $5. net.

The author, who died a few years ago, was professor of legal history in the University of Toulouse. His is one of the two or three pre-eminent names in French Legal History. Among the special qualities which commended this treatise to the editorial committee charged with the selection of works for the Continental Legal History Series in which this is the third volume is the author's constant reference to Anglo-Norman law for comparison with the history of French law. The two start together at the time of the Norman Conquest, each making its contribution to the general body of law of the English and the French peoples. The divergencies of the later law, and the new guise assumed by old principles in each country, form a story of especial interest to Anglo-American lawyers. "If the lawyers or the statesmen can understand, writes Mr. William Searle Holdsworth, "not merely the technical rules of his own system, but also the technical rules of other systems, he will be able the more easily to emancipate his mind from the texts of his own law, to discover the principle underlying the various legal solutions of these problems, and to weigh their merits. It is only a comparative study of legal history which can give this power. Therefore we claim that in these modern days this study is of the first importance to all lawyers and statesmen who wish to criticize intelligently their own legal system, or to reform it wisely."

Great things may be hoped from the comparative study of the history of the legal systems of western Europe.

"The Essentials of International Public Law." By Amos S. Hershey, Ph. D. (The Macmillan Company, New York) $3. net.

Professor Hershey, who occupies the chair of Political Science and International Law in Indiana University, has presented in this work a treatise so arranged as to be adapted not only to the needs of the class room, but to those of the specialist as well. The text is clear, concise, and up to date, controversial details being treated in footnotes which also furnish bibliographical and other *data* for a more extended study or investigation of particular topics.

The work is based largely upon modern or contemporary as distinguished from the older sources and authorities. The author has made a special attempt to revive the more important of the many recent contributions to International Law contained in monographs and periodicals—Continental as well as Anglo-American. In the parts dealing with the law of war and neutrality, the illustrations are drawn largely from recent wars. A chapter on "Aerial Warfare" presents the few positive rules applicable to this field of future warfare which have been thus far developed, including the rights of balloonists and aeronauts and the use of wireless telegraphy.

The work is very serviceable, and may be made the basis of extensive research in any field of inquiry desirable.

"Nisi Prius." By J. C. Browder. (The Neale Publishing Co., New York) Postpaid $1.50.

This book depicts in an entertaining and amusing way a term of the Nisi Prius court at an imaginary seat of government in the commonwealth of Kentucky. The lawyers and

laymen delineated in the pages of this work are very human, and not altogether figments of fancy. In fact, the author says: "Realism and Fiction by joint and common effort have created them." A keen insight into human nature is displayed in their characterization. Some of them are quite likable and many good stories are related by them or of them. The chapters relating to the Dudley Murder trial are interesting and well worth perusal by the trial lawyer.

"Brief on the Modes of Proving the Facts." By Austin Abbott. Third Edition by Charles Z. Lincoln (The Lawyers Co-operative Publishing Company, Rochester, N. Y.) $6.

The present edition of this widely used work retains everything of value in the earlier editions, and includes much that is entirely new, as well as a full development of many important topics. Such recent subjects as "Dictographs" and "Phonographs" are treated.

The editor, Charles Z. Lincoln, was legal adviser to Governors Morton, Black, and Roosevelt, and is the author of the Constitutional History and the Annotated Constitution of New York.

As planned by Dr. Abbott, the work is an alphabet of evidence, classified according to the object of proof, *i. e.*, the fact which it is desired to get in or keep out. This arrangement presents an index of those evidentiary facts common to various classes of litigation.

The briefs have long ranked as "desk books" for the busy lawyer. They anticipate, as few works have done, the requirements of counsel. They have long been recognized as reliable guides, and their value grows with each revision and enlargement. The forthcoming edition cannot fail to be highly appreciated by the profession.

"Conduct of Lawsuits." By John C. Reed. Second Edition with introduction by Prof. John H. Wigmore. (Little, Brown, & Co., Boston) $4. net.

This is an old friend in a new dress. It is printed on thin opaque paper, gilt edges, and bound in flexible leather. It is a handy reference edition of a book that has long ranked as a legal classic.

With the exception of a few slight corrections, Mr. Reed's work has been reprinted exactly as he left it, in the belief that it will need a greater age to produce a better work.

In his introduction Professor Wigmore says: "This is the kind of book whose substance every young lawyer should commit to memory. I mean that statement literally. On leaving the law school, he should live with this book until he knows its precepts from cover to cover. A rule of law can be searched for when needed; but not so these principles of tact and judgment in personal conduct. . . . If to the equipment of legal knowledge and honest unskilled ambition which thousands of beginners among us to-day possess, could be added in each one the intelligent use of the mature wisdom here purveyed, the profession and the community in the coming generation would be notably the better for it."

Few law writers have been accorded such a splendid tribute as this.

"Pure Food and Drug Legal Manual." Vol. I, edited by Charles Wesley Dunn (Dunn's Pure Food and Drug Legal Manual Corporation, 32 Liberty St., New York (Two volumes, $12.

The purpose of this manual is to afford, in a convenient form, complete and accurate information regarding the law of pure food and drugs, Federal state, and territorial. The aim is to place in the hands of the reader a reference manual containing all the pure food and drug laws, both general and special, rules and regulations issued for their enforcement, standards, established, administrative decisions, and decisions of the courts. In short, full information so uniformly classified that the whole law, or a particular law, regarding any subject or product, is immediately available for guidance.

The great volume of legislation in this field has rendered a uniform, analytical, and comparative statement of the law a necessity which has been supplied by the compilation of this manual. It is exhaustive in treatment, complete in detail, accurate in statement, simple, and of ready access in form. Volume I, which is complete in itself, contains the general food and drug laws. A second volume, soon to be issued, will treat of the special food and drug laws, the rules and regulations, and the food standards.

"The New Competition." By Arthur Jerome Eddy. (D. Appleton & Co., New York) $2. net.

This book, by the well-known author of the "Law of Combinations," discusses the conditions underlying the radical change that is taking place in the commercial and industrial world,—the change from a competitive to a co-operative basis. The conclusions are based upon the operations of the number of Open Price Associations. The basis of the new competition will be the open price. The author believes that this policy will help greatly to expose and correct some of the more glaring evils of the present system. When all prices, all bids, are made openly so that customers and competitors may examine and analyze them, he urges that it will be exceedingly difficult to hide agreements intended to favor some to the detriment of others. Concealment characterizes all the dealings of the old competition; frankness is vital to the new. The effect of competition under open and straightforward conditions, the writer declares, would be stability of prices at normal levels. The competition, the rivalry, would be friendly and open. The co-operation required to establish the new competition implies a degree of frankness heretofore unknown in the industrial world, but this is a condition toward which the author believes it is progressing.

The new co-operation, it is predicted, will result in more harmonious relations between employer and employee, and buyer and seller, and in the establishment of fair prices.

The policy of segregation is advocated as a solution of the trust problem. By a segregation is meant such an isolation of the component parts of a trust as will enable competitors and the public to see clearly what each is doing without destroying the ties that bind the parts into one whole.

The closing chapters of the work deal with the Labor Problem, Class Legislation, and Constructive Legislation. The author's suggestions deserve careful consideration.

"Wharton's Criminal Law." 11th ed. By James M. Kerr. 3 vols. $22.50.

"Practice in the Courts of Louisiana." By K. A. Cross. I vol. $12.

"Forms of Pleading and Practice for North Carolina." By George P. Pell. 1 vol. Buckram, $7.50.

"The Upas Tree." A lawyer's novel. By Robert McMurdy. $1.50.

Recent Articles of Interest to Lawyers

Aliens.

"How Rochester is Beginning to Solve the Immigration Problem."—1 National Municipal Review, 662.

Appeal.

"Shall We Stop Appealing to the Privy Council?—What the Newspapers say."—32 Canadian Law Times, 804.

Assumpsit.

"Money paid under Compulsion of Legal Process."—48 Canada Law Journal, 535.

Attorneys.

"The recent Movement toward the Realization of High Ideals in the Legal Profession."—3 American Law School Review, 211.

"Stories of English Law and Lawyers."—32 Canadian Law Times, 785.

Bankruptcy.

"After-Acquired Property of an Undischarged Bankrupt."—133 Law Times, 586.

Banks.

"Banking and Currency Reform."—19 Case and Comment, 369.

"Necessity of Banking and Currency Reform."—19 Case and Comment, 377.

"Banking Reform."—19 Case and Comment, 407.

"Plan of the National Monetary Commission."—19 Case and Comment, 382.

"The National Banking System and the Proposed National Reserve Association."—19 Case and Comment, 401.

"The Money Trust."—19 Case and Comment, 387.

"Prohibition of Private Banking."—19 Case and Comment, 380.

"Bills of Exchange."—19 Case and Comment, 374.

"Bank Deposit Guaranty Legislation."—19 Case and Comment, 391.

Brokers.

"The Law Relating to Commissions to Real Estate Agents."—48 Canada Law Journal, 549.

Buildings.

"Obsolete By-laws and Modern Building."—76 Justice of the Peace, 481.

"Building Lines."—76 Justice of the Peace, 483, 495.

"A Second Housing Bill."—76 Justice of the Peace, 493.

Carriers.

"The 'Titanic' Death Liability."—7 Illinois Law Review, 137.

"Chicago and Cleveland Street Railway Settlements."—1 National Municipal Review, 630.

"The Express Companies."—The Fra, November, 1912, p. 52.

Chattels.

"The Forcible Recaption of Chattels."—48 Canada Law Journal, 581.

Civil Service.

"Political Activity by Civil Service Employees."—7 Illinois Law Review, 160.

"Civil Service Reform at Los Angeles."—1 National Municipal Review, 639.

Conflict of Laws.

"Private International Law."—28 Law Quarterly Review, 341.

Conservation.

"The Legal Basis for the Conservation Policy."—10 Delta Chi Quarterly, 105.

Constitutional Law.

"The Historic Relation of Judicial Power to Unconstitutional Legislation."—60 University of Pennsylvania Law Review, 687.

"Constitutional Amendment in Virginia."—18 Virginia Law Register, 321.

Contempt.

"In 'Camera' (Contempt in Publication of Proceedings *in camera*)."—32 Canadian Law Times, 776.

Contracts.

"The Rescission of Executory Contracts for Partial Failure in Performance."—28 Law Quarterly Review, 398.

Corporations.

"Responsibility of Directors for Amount of Judgment against Corporation in Libel Suit."—48 Canada Law Journal, 533.

"The Stockholder's Right to Inspect Books of the Corporation."—7 Illinois Law Review, 155.

"Transfer of Stock Certificate and Lien of Corporation."—18 Virginia Law Register, 481.

"The Negotiation of Stock in France."—60 University of Pennsylvania Law Review, 700.

"Company Incorporation Jurisdiction in Canada under the B. N. A. Acts, 1867."—32 Canadian Law Times, 749.

Costs.

"Costs When Justices Dismiss a Summons for Want of Jurisdiction."—76 Justice of the Peace, 470.

Cotenancy.

"Joint Tenancy."—45 Chicago Legal News, 103.

Courts.

"Our Judiciary, its Functions, its Faults, and a Remedy."—19 The Bar, 15.

"The Courts and the New Social Questions."—19 The Bar, 29.

"Judicial Legislation in Egypt."—28 Law Quarterly Review, 372.

Criminal Law.

"Recent Graft Exposures and Prosecutions."—1 National Municipal Review, 672.

"Third Degree Outrages."—5 Lawyer and Banker, 300.

Equity.

"The Place of Equity in our Legal System."—3 American Law School Review, 173.

Evidence.

"Res Ipsa Loquitur and Presumption of Negligence."—32 Canadian Law Times, 780.

"Dangers of Documentary Evidence."—5 Lawyer and Banker, 329.

"Finger Print Evidence."—5 Lawyer and Banker, 304.

"The Legal Qualifications of an Expert Medical Witness."—10 Delta Chi Quarterly, 112.

Habeas Corpus.

"Law of Habeas Corpus."—5 Lawyer and Banker, 312.

Infants.

"Justices and Minor Offenders."—76 Justice of the Peace, 505.

Intoxicating Liquors.

"An International Consideration of the Liquor Question."—1 National Municipal Review 680.

"Conditional Off-Licenses."—76 Justice of the Peace, 507.

Judges.

"The Judicial Character, as made by English Judges,"—45 Chicago Legal News, 82.

Law.

"Law from Lay Classics: Turkish and English Law Compared."—7 Illinois Law Review, 167.

Legal Education.

"Taught Law."—3 American Law School Review, 164.

"Practice Courts in Law Schools."—3 American Law School Review, 182.

"The Importance of Actual Experience at the Bar as a Preparation for Teaching Law."—3 American Law School Review, 205.

License.

"The 'Removal' of Licenses."—76 Justice of the Peace, 469.

Marriage.

"Foreign Marriage and Divorce Laws."—5 Lawyer and Banker, 321.

"Annulment of Marriage for Fraud."—2 Bench and Bar (N. S.) 140.

Master and Servant.

"Sociology of the Workmen's Compensation Act."—45 Chicago Legal News, 75.

"The Battle Line of Labor."—World's Work, November, 1912, p. 49.

Mohammedan Law.

"A History Study of Mohammedan Law." 28 Law Quarterly Review, 355.

Mortgage.

"Merger of Charges."—28 Law Quarterly Review, 348.

Municipal Corporations.

"The City as a Mother."—World's Work, November, 1912, p. 111.

"The City and Civilization."—Scribner's Magazine, November, 1912, p. 623.

"Expert City Management."—1 National Municipal Review, 549.

"The Workings of the Initiative, Referendum and Recall."—1 National Municipal Review, 586.

Municipal Home Rule in California."—1 National Municipal Review, 569.

"Work of the League of California Municipalities."—1 National Municipal Review, 603.

"Ten Years of Commission Government."—1 National Municipal Review, 562.

"Municipal Finances and Taxation."—1 National Municipal Review, 577.

Panama Canal.

"The Panama Canal Bill."—32 Canadian Law Times, 800.

Patents.

"Restrictions on Right to use Patented Article."—2 Bench and Bar (N. S.) 92.

Payment.

"Payment by a Stranger."—48 Canada Law Journal, 513.

Postal Savings Banks.

"The United States Postal Savings Bank."—19 Case and Comment, 410.

Practice and Procedure.

"Legal Procedure in Anglo-German Cases."—28 Law Quarterly Review, 392.

Railroads.

"A Government Railroad."—The Fra, November, 1912, p. 57.

Recall.

"The Recall of Judicial Decisions—A Criticism."—7 Illinois Law Review, 149.

"The Recall of Judicial Decisions—A Reply."—7 Illinois Law Review, 153

Socialism.

"Socialism in California Municipalities."—1 National Municipal Review, 611.

Taxes.

"The Exemption of the Crown from Charges in Respect of Land."—28 Law Quarterly Review, 378.

Towns.

"How a Town can Help Itself and the Country."—1 National Municipal Review, 668.

Trusts.

"The Place of Trust in Jurisprudence."—32 Canadian Law Times, 767.

Uniform Legislation.

"Twenty-second Annual Meeting of Commissioners on Uniform State Law: 'The Progress of Uniform Legislation, 1911-12.'"—45 Chicago News, 91.

Witnesses.

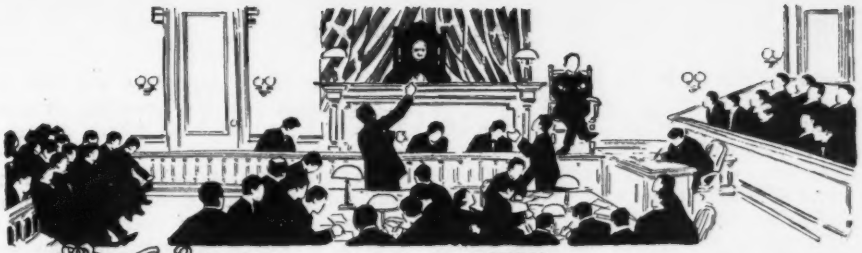
"Qualifying a Witness by Cross-Examination."—17 Dickinson Law Review, 1.

"Vouching for the Credibility of One's Adversary (Calling Adversary as Witness),"—2 Bench and Bar (N.S.) 87.

Woman Suffrage.

"Operation of Woman's Suffrage in Pacific Coast Cities.—1 National Municipal Review, 620.

"Violence in the Woman's Suffrage Movement."—Century Magazine, November, 1912, p. 148.



Judges and Lawyers

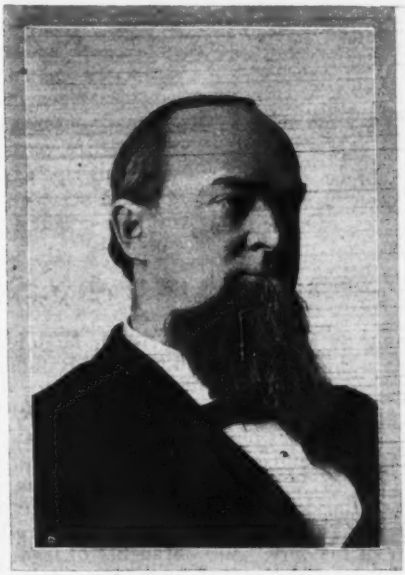
A Record of Bench and Bar

A Great Mississippi Jurist,
Hon. Albert H. Whitfield

BY S. R. DAVIS.

THE recent retirement of Honorable A. H. Whitfield from the supreme bench of Mississippi after eighteen years of continuous service, is an event worthy of more than passing notice. It has been the lot of few jurists in any state to give the people more able and acceptable service.

Judge Whitfield graduated in June. 1871, at the University of Mississippi, delivering the valedictory of his class. From the University he took the degrees of A. M. and LL.D. He immediately became a teacher in his alma mater as adjunct professor of Greek. He subsequently took the law course of the University and practised law until 1892, when he was elected dean of the Law Department. He filled this position with signal ability, and the many bright young men who were fortunate enough to gradute under his tuition entertain for him a warm personal regard and an appreciative admiration for the abilities of their honored preceptor.



HON. A. H. WHITFIELD

The two years he was dean were great and prosperous years for the Law Department of the University. The faculty and student body were sorry to lose his services, but he was destined to enter a new field of usefulness when, in 1894, Governor John M. Stone appointed him associate justice of the supreme court to succeed the venerable Justice J. A. P. Campbell, himself one of the ablest jurists who has ever adorned the bench of Mississippi.

From the very beginning of his judicial career many notable cases came before the court in which Judge Whitfield delivered the opinions. The case of Adams v. Illi-

nois Central R. R. Co. involved a vitally important public question concerning the taxable liability of railroad corporations. This case and kindred cases resulting in the state recovering about $3,000,000. This substantial sum was paid in money into the state's treasury, and about $1,000,000 of this money built the superb new state capitol without the issue of a single bond. These cases were taken to the Supreme Court of the United States by the railroads involved, and the opinions written by Judge Whitfield were affirmed unanimously by that great Court. In all, twelve cases in which Judge Whitfield wrote the opinions were appealed from the supreme court of Mississippi to the Supreme Court of the United States, and in every single case his opinion and judgment were unanimously affirmed.

To one who has read the Mississippi Supreme Court Reports during Judge Whitfield's incumbency two phases in his opinions in a certain class of cases stand out prominently. In cases of personal injury he never confused cases *ex delicto* and *ex contractu*. He rigidly held to the construction of the common law as expounded by the great text writers and the great early foundation cases of the English and American courts. In meritorious cases of personal injury where the negligence of the defendant was gross, culpable, or wanton, he unhesitatingly affirmed cases where large punitive damages were given. If in some of these cases the judgment would seem to be severe the ultimate result has been beneficial to the defendants themselves. On account of improved conditions and more vigilant care, the public is better protected and damage suits are growing less frequent every year.

From a casual reading of Mississippi Reports for several years the writer has noticed another characteristic of Judge Whitfield's decisions as applied to the criminal law. Neither the specious pleas of counsel in the defense of audacious criminals, nor the voice of the mob thirsting for the blood of the defendant, ever swayed this brave jurist a hair's breadth in the discharge of his duty. No man could be "railroaded to the pen" without every safeguard of the law being extended in his defense—however black might the crime appear on the face of the proceedings. His reversals of convictions in some cases where a grave crime had excited the execrations of a whole community caused public criticism, but Judge Whitfield stood for the fundamentals,—the right of every man to an absolutely fair trial as granted by the Constitution of his state, and he did not hesitate to remand a case for a new trial if any legal right of the defendant had been ignored.

Time will vindicate the services of such jurists as Whitfield when the transitory whirlwind of present-day politics subsides, and the people of every state realize that their greatest bulwark of safety is in an able, upright, and fearless bench.

Judge Whitfield, just passing sixty, is in the prime of vigorous manhood. A fine horseman, a lover of all out-of-doors, and a man of correct personal habits, he returns to the practice of the law unusually well equipped. A magnetic orator of the highest type, he will be able to give his clients efficient service before juries and in every court of the land.

I cannot better close this sketch of Judge A. H. Whitfield than by quoting the sentiments of two of the ablest law writers of the country, expressed to the writer on Judge Whitfield's retirement from the bench: "He is one of the strongest men of the bench, and it is to be regretted to have such a man retire to private life, particularly just at this time when his ripe experience would be of the greatest service to his state, and indeed to the country at large, through his opinions."

Death of New York Lawyer.

Adrian H. Joline, of the firm of Joline, Larkin & Rathbone, 54 Wall street, one of New York's most distinguished lawyers, died on October 15.

Mr. Joline early devoted his efforts as a lawyer to railroad litigation and to questions pertaining to trusts, mortgages, and reorganizations. He was generally known as a leader in these particular branches of legal practice. He had a remarkable memory and possessed a wonderful faculty of clearness in his speech and in his writings.

Col. William Hoynes

Dean of the Law Department, University of Notre Dame.

THE subject of this sketch is a Civil War veteran, and yet he appears to be comparatively young and in the fulness of vigor. Just before the war he entered the office of the La Crosse (Wisconsin) Republican as an apprentice. In fulfilling the duties of his station he acquired a fair knowledge of the printing business and learned to set type. His youth barred him from entering the Army at the outbreak of the war, but a year later, when the National arms had met with reverses at various points, the recruiting officers were not so particular, and on the 9th of June, 1862, he succeeded in enlisting in the command of his friend Honorable Augustus H. Pettibone, Major of the 20th Regiment of Wisconsin Volunteers. He left for the front soon afterward, and for months marched to and fro with his regiment through the Ozark Mountains of Missouri. On Sunday, December 7, 1862, he participated in the battle of Prairie Grove, Arkansas, a bitterly contested and bloody contest. He fell severely wounded in a charge on the Confederate position in the grove, and remained virtually a prisoner in the hands of the enemy where his comrades had been repulsed and driven back. But in the excitement and confusion of the battle he succeeded in getting away. He was then sixteen years of age. Before his wound was healed he crossed the Boston Mountains and was with his regiment in the capture of Van Buren, on the Arkansas river. Later he took part in the siege and capture of Vicksburg. In the hot climate of that place he came near dying of his wound, and was sent North and discharged. A sad change met him on his return home. His father had died in his absence and the brother next to him in age soon afterward passed away. His health improved sufficiently, however, to enable him to re-enlist, and this he did, joining the 2d Wisconsin Cavalry. Except while in the hospital at Memphis in the winter of 1865, undergoing treatment for a wound, he served in this regiment until the end of the war. After the war he returned to the printing office, and by hard work and frugality saved sufficient money in three years to provide for his widowed mother and younger brothers, and enable him to go to college. He matriculated in the University of Notre Dame and made remarkable progress, doing four years' work in seven or eight months. Later he entered the Law Department of the University and was awarded the degree of LL.B. in 1872.

COL. WM. HOYNES

After following newspaper work, in an editorial capacity, for several years, Colonel Hoynes opened a law office in Chicago and met from the first with remarkable success. In less than six months he had over $3,000 worth of business on hand.

Then came to him the offer of the deanship of the Law Department of the

University of Notre Dame, his alma mater, and the offer appealed to his affections in such manner as to induce him to transfer his Chicago business to trusted associates and go to Notre Dame. He has been there ever since, almost thirty years, despite tempting offers to return to journalism or go back into the practice.

From the University of Notre Dame he received the degree of Master of Arts in 1878 and that of Doctor of Laws in 1888.

In the year last named a very strenuous and even bitter political contest was waged throughout the country, and it was supposed that the nomination of Colonel Hoynes for Congress would prove helpful in carrying the state for President Harrison. He was accordingly nominated and made a canvass, referred to even now as remarkable. He succeeded in getting several hundred votes that probably could not otherwise have been secured for the national and state tickets and made a gain himself of about 2,000.

Considering it his paramount duty to provide for his widowed mother during her lifetime, and for his younger brothers as well, until they grew up and became self-supporting, he remained a bachelor in order to be able to fulfil this duty in every particular. It is a source of much gratification to him, he says, that he has conscientiously done so.

New York Judge Passes Away.

Justice Alfred Spring, sixty-two years old, and one of the best-known jurists in this country, died on October 22.

He was appointed a justice of the supreme court by Governor Morton in January, 1895. He was later elected for the terms 1895-1909 and 1910 to 1921. In 1899 he became judge of the fourth department of the appellate division at Rochester.

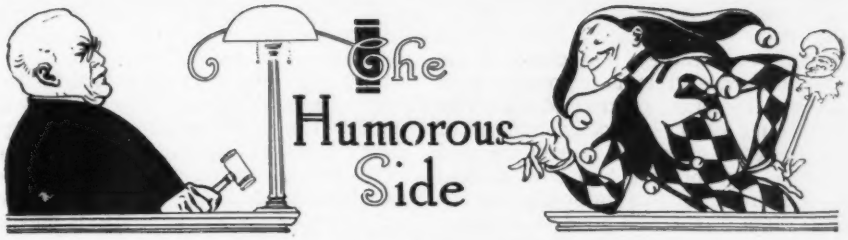
During the time Justice Spring was on the bench in the appellate division he participated in many important rulings, and several of his opinions aroused wide interest. In the employers' liability cases, particularly in Ives against the South Buffalo Railway Company and the People against Lockner, the celebrated bakeshop case, Justice Spring decided in favor of the constitutionality in each opinion. He also was identified with an interesting ruling in the Indian land case and other matters.

As a writer Justice Spring long had held a distinguished position. His article on the judiciary evoked the favorable comment of Theodore Roosevelt, who took occasion to say that this country was fortunate in having a jurist of the character of Justice Spring. The handling of the ships subsidy question by Justice Spring was a recent article that caused comment, and his essays on Hamilton and other writings are considered to have been notable contributions to our literature.

ON THE DEATH OF A GREAT LAWYER.

It is not for us to mourn the loss
Of princely men, who've shaken off
The tender thread which bound them to the earth,
Where, by their lot, pain, anguish, greed,
And crime and countless woes all rival for their time;
But rather, contemplating lives
O'erflowing with love and duties done,
Shall we rejoice that faded wreaths
Of laurel, won in earthly courts,
Have yielded place to burnished crowns above.
But stay! The poverty of words compels a pause
Before a life which in itself
A eulogy on duty, love, and grandeur speaks!

CHARLTON A. ALEXANDER,
of the Jackson (Miss.) Bar.



An ounce of mirth is worth a pound of sorrow.—Baxter.

The Difference. Wife—John, what is the difference between direct taxation and indirect taxation?

Husband—Why, the difference between your asking me for money and going through my trousers while I'm asleep. —Philadelphia Bulletin.

No Escape. His horses and mules had all gone lame,
And he lost his cows in a poker game.
A cyclone came and blew down his barn;
Then an earthquake swallowed up his farm,
But the tax collector came around
And taxed him on his hole in the ground.

A Change of Opinion. Poor young Phileteus Scraggs, in 1870. "Why, of course, an income tax is all right. I only wish I had a taxable income!"

Rich old Phileteus Scraggs, in 1912. "An income tax is an outrage! It leads to bribery and extortion and criminal dishonesty!"—Cleveland Plain Dealer.

High Salary. A certain prominent lawyer of Toronto is in the habit of lecturing his office staff from the junior partner down, and Tommy, the office boy, comes in for his full share of the admonition. That his words were appreciated was made evident to the lawyer by a conversation between Tommy and another office boy on the same floor, which he overheard.

"Wotcher wages?" asked the other boy.

"Ten thousand a year," replied Tommy.

"Aw, g'wan!"

"Sure," insisted Tommy, unabashed. "Four dollars a week in cash an' de rest in legal advice."

Even Money. Congressman Lamb, of Virginia, has an old "befo' de wah" darkey working on his place whom he pays a dollar a day. The old man is not very fond of work, and loses a day very often because of his alleged infirmities. The other day the congressman told him he was going to raise his wages from $6 a week to $7. The old darkey emphatically refused the raise, and when his boss asked him why, he answered:

"It's like dis, Mister John. When I loses a day from work now I kin count mah money; but if you gib me a raise, an' I loses a day, I won' know how much I'se got comin' tuh me."—Judge.

Divorce Wanted. The lawyer was sitting at his desk, absorbed in the preparation of a brief, says the New York Mail. So bent was he on his work that he did not hear the door as it was pushed gently open, nor see the curly head that was thrust into his office. A little sob attracted his notice, and, turning, he saw a face that was streaked with tears and told plainly that his feelings had been hurt.

"Well, my little man, did you want to see me?"

"Are you a lawyer?"

"Yes. What do you want?"

"I want"—and there was a resolute ring in his voice—"I want a divorce from my papa and mamma."

No Chance for a Libel Suit. "An elegant time is said to have been had," painstakingly wrote the able editor of the Polkville (Arkansas) Weekly Clarion, "on or about last Wednesday even-

ing, upon which occasion Mrs. Gladys Brown (or Browne), who claims to reside on Pardee street, is rumored to have given a reception to the ladies of the Buzz-Buzz Club. A goodly number of the hostess's ostensible friends are said to have been present, and it is claimed on seemingly reliable authority that all felt that it was indeed good to be there. It is stated that dainty refreshments were served, to which it is asserted all present did ample justice. It is further alleged that harmless games and friendly converse followed the repast, and it is claimed that the occasion was one long to be remembered." "There!" ejaculated the editor, regarding his handiwork with approval, "if anybody can hang a libel suit on that they are eminently welcome to do so."

A Tangle. A case of singular corruption on the part of an attorney caused Miss Jane Addams, the Chicago welfare worker, to say:

"This case reminds me of a man who was being tried for the theft of a ham. The opposing lawyers shuffled so, they confused the witnesses so, they so strained their own statements—in a word, they got the case into such a formidable tangle of falsehood and mendacity that at last the prisoner, in a tremulous voice, spoke up and said:

" 'Judge, if you'll make them lawyers set down and shut up for a minute, I'm willin' to whirl in and tell the truth.' "—Minneapolis Journal.

Mitigating Circumstances. A colored woman of Alexandria was on trial before a magistrate, charged with inhuman treatment of her offspring. Evidence was clear that the woman had severely beaten the youngster, aged some nine years, who was in court to exhibit his battered condition. Before imposing sentence, his Honor asked the woman whether she had anything to say. "Kin I ask yo' Honah a question?" inquired the prisoner. The judge nodded affirmatively. "Well, then, yo' Honah, I'd like to ask yo' whether yo' was ever the parent of a puffectly wurthless cullud chile?"

Faith Unshaken. Colonel Blank, a police magistrate of Toronto, has a local reputation for dispensing justice in his equity mill with no special regard for the intricacies of the law. The Colonel is highly respected in the community. Every man gets equal and exact justice in his court. Sometimes the lawyers appeal from his decisions, claiming they are not based on the law as it stands on the books. The defense in a case of some moment appealed once, and kept on appealing until a court of last resort was reached. The Colonel came into his office one morning and was met by a legal friend.

"Good-morning, Colonel," said the friend; "I must congratulate your lordship this morning"

"What is the provocation?"

"Haven't you seen the morning papers? The supreme court has confirmed your judgment in the case of So-and-So."

"Well," the Colonel replied, as he drew off his gloves, "I still believe I'm right."

Advice from an Expert. George Washington Johnson stood before an avenging judge, and realized that all the evidence was against him, says the Popular Magazine. It was the same old charge.

"But," said the judge with a perplexed frown. "I don't understand, Johnson, how it was possible for you to steal those chickens when they were roosting right under the owner's window and there were two vicious bulldogs in the yard."

"It wouldn't do you no good, jedge, foh me to 'splain how I caught 'em," replied the successful culprit. "You couldn't do it if you tried forty times, an' you might git a hide full of buckshot de ve'y fust time you put your laig ober de fence. De best way for you to do is to buy your chickens in de market."

Reason was Plain. "My husband has deserted me and I want a warrant," announced the large lady.

"What reason did he have for deserting you?" asked the prosecutor.

"I don't want any lip from you; I want a warrant. I don't know what reason he had."

"I think I understand his reason," said the official feebly, as he proceeded to draw up a warrant.—Pittsburgh Post.